

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
TRITON MUSEUM OF ART**

This Agreement ("Agreement") is by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"), and Triton Museum of Art, a California nonprofit corporation, with its principal place of business located at 1505 Warburton Avenue, Santa Clara, California 95050 ("Recipient"). City and Recipient may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

Whereas:

1. As one of its functions as a chartered municipal corporation, City seeks to encourage, protect and enhance the health, safety, welfare and general good of the City and its citizens as well as improve the general quality of life for its citizens; and,
2. City desires to utilize the experience and ability of Recipient in helping to provide cultural, educational, recreational and entertainment opportunities for the general good of all.

In consideration for the above referenced recitals and the following mutual covenants, agreements and obligations of the Parties, the Recipient and City agree as follows:

AGREEMENT PROVISIONS

1. Incorporation of Preamble and Recitals

The Parties to this Agreement agree and attest to the truth and accuracy of the provisions contained in the Preamble and Recitals set forth above. The provisions of the Preamble and Recitals are hereby incorporated and made a part of this Agreement by this reference. The Parties agree that this Agreement has been entered into, at least in part, in consideration of the provisions contained in the Preamble and Recitals, as well as the provisions contained in the balance of this Agreement.

2. Nature of Agreement

City agrees to contribute an amount set forth in this Agreement ("Contribution") to Recipient, in consideration for Recipient's performance of the Activities described below and full compliance with all of the terms and conditions of this Agreement.

3. Duties of Recipient

In consideration for the receipt of funds to be paid to Recipient by City, Recipient shall perform all of the described work, services and activities required to present or to bring about the event(s) described in Exhibit A (collectively referred to herein as the "Services"), entitled, "Description of Recipient's Activities and Obligations," (the "Activities"), attached and incorporated by this reference.

4. Payment of Contribution

Recipient shall perform all of the Services under this Agreement as a condition precedent to the City's delivery of the fund ("Contribution") referenced in Exhibit B, entitled, "Amount of Contribution, Terms of Payment and Restrictions," attached and incorporated by this reference. Upon Recipient's compliance with the terms and conditions of this Agreement, City will contribute to Recipient the amount set forth in Exhibit B. The Contribution paid to Recipient shall not be used for any other purpose than to pay expenses, (or if said expenses have already been paid by Recipient, then for reimbursement of same to Recipient) related to the Activities. None of the City's Contribution will be used to pay for any expenses of Recipient incurred before the Effective Date.

5. Limitation of Financial Responsibility

In no event shall City's share of the Recipient's expenses related to the Services and Activities provided under this Agreement exceed the amount set forth in Exhibit B. In no event will Recipient have the right or power to pledge the credit of City or incur any obligation in the name of City.

6. Records and Documentation

Within thirty (30) days following the conclusion of Recipient's performance of the Activities required under this Agreement, Recipient shall deliver to the City a written detailed accounting statement showing all receipts and disbursements received or made in connection with the provision of the Activities for City review and/or audit. This accounting statement shall provide expense summary documentation to the satisfaction of the City Manager. If any of the funds listed in Exhibit B are not expended on the Activities pursuant to the terms of this Agreement, the unspent funds shall be returned to the City concurrently with submittal of said accounting statement.

7. Independent Contractor Status

It is agreed that during the performance of the Services and Activities required under the terms and conditions of this Agreement, Recipient, and any person(s) who is either employed by or contracted with Recipient to furnish labor and/or materials, either work as volunteer or as a paid employee, shall be deemed not to be an employee, contractor or agent of City. Recipient has full rights to manage its employees, volunteers and contractors subject to the requirements of the law. The means by which the Services and Activities shall be accomplished is under the sole care, custody and control of Recipient.

8. Hold Harmless/Indemnification

Recipient agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents and employees from and against any claim, injury, liability, loss, cost and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City may become legally liable arising from Recipient's acts, errors or omissions, with respect to or in any way connected with the prosecution of the activities of Recipient pursuant to this Agreement.

9. Insurance Requirements

Prior to commencement of any of the activities described in this Agreement and during its entire term, Recipient shall provide and/or maintain, in full force and effect, the following insurance policies:

- A. commercial general liability policy (bodily injury and property damage);
- B. worker's compensation employers' liability policy; and,
- C. comprehensive automobile liability insurance policy (if applicable).

Said insurance policies shall be maintained, with respect to any employees of Recipient and any of its vehicles assigned to the performance of services under this Agreement with coverage amounts, (including the required endorsements, certificates of insurance and coverage verification), as defined in Exhibit C, attached hereto and incorporated herein by reference. No third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. Nonassignment

Except as expressly agreed in writing by City, all Activities provided and Services required to be rendered under this Agreement shall be performed by Recipient. Recipient shall not otherwise subcontract or delegate to others the Activities to be performed under this Agreement.

11. Confirmation of Non Profit Status

As a prerequisite for City approval of this Agreement and for the payment of funds by the City, Recipient shall provide City with current written proof that Recipient has qualified for, and has complied with, all conditions required to attain the status of a non profit organization, as that status is defined under both Federal Internal Revenue Code, Section 501(c)(3), and State of California Franchise Tax Board under California Revenue and Taxation Code Section 23701. Recipient shall provide such proof of non profit status to the Office of the City Clerk at the City.

12. Time of Performance/Termination

All Services under this Agreement are to commence upon the Effective Date, and shall continue through June 30, 2019, unless sooner terminated in accordance with the terms of this Agreement. The time allotted for the completion of the Services and Activities

required under this Agreement may be extended by mutual agreement of the Parties for such additional period of time as the City may determine to be in the public interest. This Agreement may be terminated by either Party upon ten (10) calendar days written notice to the other, without cause. In the event of any termination, City shall reimburse Recipient for all services actually performed and/or all expenses actually incurred under this Agreement, to date of termination, and such payment shall constitute full payment and there shall be no other charge. Upon request of City, Recipient shall provide City with copies of all documents prepared by Recipient as well as all receipts and proof of expenditures being requested for reimbursement.

13. Notices

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Office of the City Manager
1500 Warburton Avenue
Santa Clara, CA 95050

Or by facsimile at (408) 241-6771

And to Recipient addressed as follows:

Triton Museum of Art
1505 Warburton Avenue
Santa Clara, CA 95050

Or by facsimile at (408) 247-3796

14. Captions

The captions of the various sections, paragraphs and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

15. Statutes and Law Governing Contract

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

16. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

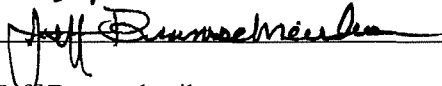
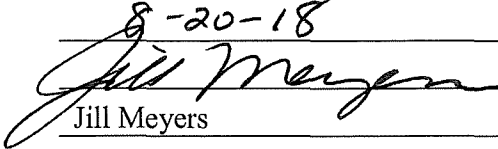
ATTEST:

JENNIFER YAMAGUMA
Acting City Clerk

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

**TRITON MUSEUM OF ART
a California nonprofit corporation**

Dated: 8/17/18
By: 
Name: Jeff Bramschreiber
Title: President of the Board
By: 8-20-18

Name: Jill Meyers
Title: Executive Director
Local Address: 1505 Warburton Avenue
Santa Clara, CA 95050
Email Address: jbmeyers@tritonmuseum.org
Telephone: (408) 247-3754
Fax: (408) 247-3796

“RECIPIENT”

**CONTRIBUTION AGREEMENT
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EXHIBIT A

DESCRIPTION OF RECIPIENT'S ACTIVITIES AND OBLIGATIONS

- A. Recipient shall carry out the following activities on behalf of City:
1. Provide quality art exhibitions, events and educational programs for the community;
 2. Provide community outreach programs targeted towards art education for families and school children;
 3. Distribute information to visitors regarding the use of City facilities and promote the City for future events in the form of brochures, periodicals and promotional materials, which call attention to the City's facilities and services, encourage people to visit City, and encourage the location of businesses in the City. The publication produced by the Santa Clara Chamber of Commerce titled, "Santa Clara Tourist Guide" is to be among the brochures distributed;
 4. Provide a qualified Museum staff member to serve as a juror for City-sponsored art competitions; and
 5. Explore opportunities for collaboration on City-sponsored and Museum-sponsored events.
- B. Recipient shall also comply with the following requirement:
- By the first of each month, provide to the City a summary report highlighting art and education activities, funding sources, special appearances or shows for which a charge is made to the public, and the dates of special events that require rental of the Triton Museum of Art (indoor or outdoor) and Jamieson Brown House for the previous month.

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EXHIBIT B

AMOUNT OF CONTRIBUTION, TERMS OF PAYMENT AND RESTRICTIONS

A. Amount of Contribution.

Pursuant to the terms of this Agreement for services provided by the Recipient during the twelve month term of this Agreement, City will pay Recipient Twenty Four Thousand One Hundred Thirty Dollars (\$24,130.00) each month for twelve (12) consecutive months, beginning July 1, 2018 through June 30, 2019.

B. Terms of Payment.

In no event shall the sum of the City's payment under this Agreement exceed the sum of Two Hundred Eighty Nine Thousand Five Hundred Sixty Dollars (\$289,560.00), subject to budget appropriations.

C. Restrictions.

None of said money shall be used to reimburse or pay for Triton's expenses for services previously rendered or for promotional activities expended prior to the date of this Agreement, unless expressly authorized by City. Such monthly payments from City shall be accepted by Triton Museum of Art as full compensation for the museum's services and promotional efforts

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EXHIBIT C

**INSURANCE COVERAGE REQUIREMENTS
FOR
CONTRIBUTION AGREEMENTS**

Without limiting the Recipient's indemnification of the City, and prior to commencing the Services and the disbursements of contributions under this Agreement, the Recipient shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$1,000,000 each occurrence
 - \$1,000,000 general aggregate
 - \$1,000,000 products/completed operations aggregate
 - \$1,000,000 personal injury

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.

2. The indemnification and hold harmless obligations of Recipient included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Recipient under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Recipient's operations, using either Insurance Services Office (ISO) Endorsement CG 20 10 03 97, CG 20 26 11 85, or its equivalent.
2. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
3. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Recipient and City agree as follows:

The City reserves the right to withhold payments to the Recipient in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COMPLIANCE

Recipient or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their

equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Recipient shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara City Manager's Office
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

G. QUALIFYING INSURERS

All of the insurance companies providing insurance for Recipient shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

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EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- B. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- C. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- D. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.