

MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF HUNTINGTON BEACH AND THE
HUNTINGTON BEACH ART CENTER FOUNDATION

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into on _____, 2022, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (hereinafter referred to as “CITY”), and THE HUNTINGTON BEACH ART CENTER FOUNDATION, an unincorporated association (hereinafter referred to as “FOUNDATION”).

WHEREAS, FOUNDATION was instrumental in creating the vision for the Huntington Beach Art Center in the City of Huntington Beach over 30 years ago; and CITY originally purchased the land and building at 538 Main Street for the Huntington Beach Art Center; and

FOUNDATION has donated more than \$2 million to the CITY for the Huntington Beach Art Center; and

CITY and FOUNDATION partnered together to remodel and renovate the building to create the Huntington Beach Art Center; the Huntington Beach Art Center shall consist of the main building and adjacent parking facility at 538 Main Street; and

CITY and FOUNDATION wish to enter into an agreement to formalize its public/private partnership and obligations to the community; and to memorialize its mission of ongoing support to the Huntington Beach Art Center; and

CITY and FOUNDATION desire to clarify their respective obligation and contributions for the Huntington Beach Art Center and do hereby enter into the following Memorandum of Understanding.

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter contained and intending to be legally bound, the parties covenant and agrees as follows:

SECTION 1. TERM

This MOU will become effective on the date it is approved by CITY COUNCIL and shall terminate five (5) years thereafter, except with respect to any obligations hereunder which are to be performed thereafter. Upon mutual written consent of the parties, this Agreement may be extended for one (1) additional five (5) year term.

SECTION 2. OBLIGATIONS OF CITY

The obligations of CITY pursuant to this Agreement shall be as follows:

1. Maintain, repair, and insure the Huntington Beach Art Center (HBAC) and related infrastructure, furniture, fixtures, and equipment, including signage.
2. Operate Huntington Beach Art Center, to present works of art in all media.
3. Provide opportunities for arts education.
4. Serve as a model of leading and advancing public awareness and integration of arts and culture in Huntington Beach.
5. Provide community outreach enhancing the visibility and recognition of the Huntington Beach Art Center within the community.
6. Provide meeting rooms for the HBAC Foundation at City facilities at no charge, limited to FOUNDATION purposes only, and subject to the City's calendar of activities and approval.
7. When writing and administering grants through the FOUNDATION'S 501(c)3 status, CITY is subject to FOUNDATION review and authorization of such grants.
8. Provide a non-voting staff liaison to the FOUNDATION
9. Provide an area within the HBAC for FOUNDATION to maintain documents.
10. Provide staff assistance and logistical support, as available, for FOUNDATION fundraising programs.
11. Collaborate with FOUNDATION for new fundraising ideas and opportunities.

SECTION 3. OBLIGATIONS OF THE FOUNDATION

1. Maintain status as a 501(c)3 Charitable Organization to provide its services as an organization accepting public and private donations and grants intended for the HBAC's use in the furthering of art and cultural activities with existing or future HBAC programs and operations.
2. Conduct regularly scheduled, agendized FOUNDATION meetings, including representation from CITY staff, to further the mission of the HBAC and FOUNDATION.
3. Maintain and make available upon request, 501(c)3 requirements, including but not limited to, governing documents, agendas and minutes.
4. Fundraise for the HBAC, exhibitions and education programs, in collaboration with CITY staff, through events such as Surf City Arts Fest, concessions sales at receptions and special events, and other unique events as mutually agreed upon by both parties.
5. Fundraise for the FOUNDATION Endowment for the future benefit of the HBAC.
6. Fundraise for future capital campaigns to benefit the HBAC in collaboration with the CITY and HBAC staff. Upon mutual agreement of both parties, donations received for capital campaigns will be donated into a CITY donation account for use to support HBAC facility improvements.

7. Assist with the sales of items at HBAC and/or off-site functions to support HBAC and FOUNDATION objectives.

8. Assist with special requests from the CITY as mutually agreed upon by both parties. Provide the finances to purchase equipment, supplies and materials for programming at HBAC.

9. Manage and oversee all monies raised and funds received, including but not limited to, sales proceeds, donations, grants, auxiliary memberships and/or gifts. Upon formal request by the Director of Community & Library Services or designee, and subject to approval by FOUNDATION at a meeting, provide funding from the grants account for exhibitions, special programs and events.

10. Provide volunteer support and community outreach to cultivate advocacy for the arts and visibility for the HBAC throughout the local community.

11. Cultivate partnerships and collaborations in support of HBAC, through ancillary groups, such as the Huntington Beach Artist Council, and organizations of artists who produce, encourage and promote arts throughout the local community and beyond.

SECTION 4. ACCESS TO CITY MARKS AND LOGOS

FOUNDATION shall have the right to use the official Huntington Beach City logo, surfboard logo, and CITY's "Surf City Huntington Beach" trademark with the prior written approval of the City before using any of these logos or trademark, which approval shall be at the sole discretion of the City. Note: The surfboard logo is not the property of CITY.

FOUNDATION will use neither logo for commercial purposes. The Foundation shall have the final review of any materials and graphics depicting representation of the Foundation.

SECTION 5. HOLD HARMLESS

FOUNDATION shall protect, defend, indemnify and hold harmless CITY, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expenses, costs (including without limitation, costs and fees of litigation of every nature) arising out of or in connection with performance of this MOU or its failure to comply with any of its obligations contained in this MOU except such loss or damage which was caused by the sole negligence or willful misconduct of CITY.

SECTION 6. WORKERS' COMPENSATION INSURANCE

Pursuant to California Labor Code Section 1861, FOUNDATION acknowledges awareness of Section 3700 et seq. of said Code, which requires every employer to be insured against liability for workers' compensation; FOUNDATION covenants that it will comply with such provisions prior to commencing performance of the work hereunder. The FOUNDATION does not intend to act as an employer. The FOUNDATION only reimburses the Art Center for the cost of services and temporary employment.

FOUNDATION shall maintain workers' compensation insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit.

FOUNDATION shall require all subcontractors to provide such workers' compensation insurance for all of the subcontractors' employees. FOUNDATION shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation insurance and FOUNDATION shall similarly require all subcontractors to waive subrogation.

SECTION 7. GENERAL LIABILITY INSURANCE

In addition to the workers' compensation insurance and FOUNDATION's covenant to indemnify CITY, FOUNDATION shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage. Said policy shall indemnify FOUNDATION, its officers, agents and employees, while acting within the scope of their duties, against any and all claims arising out of or in connection with this Agreement, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of \$1,000,000 per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000. Said policy shall name CITY, its agents, its officers, employees and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable shall be deemed excess coverage and that FOUNDATION's insurance shall be primary.

Under no circumstances shall the above-mentioned insurance contain a self-insured retention, or a "deductible," or any other similar form of limitation on the required coverage.

SECTION 8. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS

Prior to commencement of this Agreement, FOUNDATION shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; these certificates shall:

- (a) provide the name and policy number of each carrier and policy;
- (b) state that the policy is currently in force;
- (c) and promise to provide that such policies shall not be canceled or modified without thirty(30) days' prior written notice of CITY; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

FOUNDATION shall maintain the foregoing insurance coverage in force during the entire term of the Agreement or any renewals or extensions thereof or during any holdover period.

The requirement for carrying the foregoing insurance coverage shall not derogate from FOUNDATION's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representatives shall at all times have the right to demand the original or a copy of any or all the policies of insurance. FOUNDATION shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

SECTION 9. ASSIGNING AS BREACH

Neither party shall encumber, assign, or otherwise transfer this MOU, or any right or interest in this MOU, without the express written consent of the other party. A consent by a party to one assignment or transfer to another person shall not be deemed to be a consent to any subsequent assignment or transfer to another person. Any encumbrance, assignment or transfer, without the prior written consent of the other party, whether it is voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the other party, terminate this MOU.

SECTION 10. TERMS BINDING ON SUCCESSORS

All the terms, covenants and conditions of this MOU shall inure to the benefit of and be binding upon the parties and their successors and assigns. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

SECTION 11. CONFLICT OF INTEREST

FOUNDATION shall employ no CITY official or any regular CITY employee in the work performed pursuant to this MOU. No officer or employee of CITY shall have any financial interest in this MOU in violation of the applicable provisions of the California Government Code.

SECTION 12. NONDISCLOSURES/PRESS RELEASES

FOUNDATION shall consult with CITY prior to issuing any press releases or otherwise making any public statements with respect to this MOU, the transactions contemplated herein, or matters arising herefrom.

SECTION 13. CUMULATIVE REMEDIES

The remedies given to the parties in this MOU shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this MOU.

SECTION 14. WAIVER OF BREACH

The waiver by CITY of any breach by FOUNDATION of any of the provisions of this MOU, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such breach or a waiver of any subsequent breach by FOUNDATION, either of the same or another provision of this MOU.

SECTION 15. FORCE MAJEURE - UNAVOIDABLE DELAYS

Should the performance of any act required by this MOU to be performed by either CITY or FOUNDATION be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

SECTION 16. NOTICE

Any written notice, given under the terms of this MOU, shall be either delivered personally or mailed, certified mail, postage prepaid, addressed to the party concerned, as follows:

CITY	FOUNDATION
Director of Community & Library Services	Attn: Chair
City of Huntington Beach	Huntington Beach Art Center Foundation
2000 Main Street, PO Box 190	538 Main Street
Huntington Beach, CA 92648	Huntington Beach, CA 92648
Phone: (714) 536-5291	Phone: (714) 374-1650

If a party desires to change the address for notices set forth herein, said party shall provide 30 days advance written notice to the other party of any such change.

SECTION 17. ATTORNEY'S FEES

In the event suit is brought by either party to enforce the terms and provisions of this MOU or to secure the performance hereof, each party shall bear its own attorney's fees. The prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

SECTION 18. CONTROLLING LAW AND VENUE

The rights and liabilities of the parties, and the interpretation and construction of this MOU, shall be determined in accordance with the laws of the State of California. Any controversy arising out of or under this MOU, if litigated, shall be adjudicated in a court of competent jurisdiction in Orange County, California.

SECTION 19. SECTION TITLES

The section titles in this MOU are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of this MOU or in any way affect this MOU.

SECTION 20. TIME OF ESSENCE

Time is of the essence with respect to all provisions of this MOU in which a definite time for performance is specified including, but not limited to, the expiration of this MOU.

SECTION 21. SURVIVAL OF INDEMNITIES

Termination of this MOU shall not affect the right of CITY to enforce any and all indemnities given or made by FOUNDATION under this MOU, nor shall it affect any provision of this MOU that expressly states that the provision shall survive termination thereof.

SECTION 22. NONLIABILITY OF CITY OFFICIAL, EMPLOYEES OR AGENTS

No elective or appointed CITY or CITY affiliated board, commission or member thereof, or officer, official, employee or agent of CITY shall be personally liable to FOUNDATION, its successors and assigns, of any default or breach by CITY under this MOU or for any amount which may become due to FOUNDATION, its successors and assigns, under this MOU or for any obligation of CITY under this MOU.

SECTION 23. TERMINATION

This MOU may be terminated by either party with or without cause upon one hundred twenty (120) days notice in writing.

SECTION 24. MODIFICATIONS IN WRITING

This MOU contains and embraces the entire agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited or extended orally or by any other agreement between the parties unless such agreement be expressed in writing, signed and acknowledged by CITY and FOUNDATION, or their successors in interest.

SECTION 25. PARTIAL INVALIDITY

Should any provision of this MOU be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this MOU shall remain in full force and their effect unimpaired by the holding, so long as the reasonable expectations of the parties hereto are not materially impaired.

SECTION 26. MOU IN COUNTERPARTS

This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same document.

SECTION 27. NO TITLE INTEREST

No title interest of any kind is hereby given and FOUNDATION shall never assert any claim or title to the Art Center or any other public property. Use of the Art Center by FOUNDATION is non-exclusive, and the Art Center shall at all times during its operating hours remain open for use by the public.

SECTION 28. ENTIRETY

The foregoing sets forth the entire agreement between the parties.

[SIGNATURES ON SEPARATE PAGE]

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by and through their authorized officers the 15th day, of July, 2022.

HUNTINGTON BEACH ART CENTER
FOUNDATION, an unincorporated association:

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of
California

By: 

MICHAEL C. ADAMS

print name

ITS: (circle one) Chairman/President/Vice
President SECRETARY

AND

By: 

Mary Louise Shattuck

print name

ITS: (circle one) Secretary/Chief Financial
Officer/Asst. Secretary - Treasurer
Co-Chair

Mayor

ATTEST:

City Clerk

INITIATED AND APPROVED:

Director of Community & Library Services

APPROVED AS TO FORM:

City Attorney ML

REVIEWED AND APPROVED

City Manager

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by and through their authorized officers the ____ day, of July, 2022.

HUNTINGTON BEACH ART CENTER
FOUNDATION, an unincorporated association:

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of
California

By: _____

print name
ITS: (circle one) Chairman/President/Vice
President

AND

By: _____

print name
ITS: (circle one) Secretary/Chief Financial
Officer/Asst. Secretary – Treasurer

REVIEWED AND APPROVED

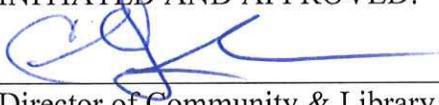
City Manager

Mayor

ATTEST:

City Clerk

INITIATED AND APPROVED:



Director of Community & Library Services

APPROVED AS TO FORM:



City Attorney *mw*

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
PRIMARY AND NON-CONTRIBUTORY
ENDORSEMENT FOR PUBLIC ENTITIES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

The City of Huntington Beach, it's officers, elected or appointed officials, employees, agents and volunteers

A. Section II – WHO IS AN INSURED is amended to include:

4. Any public entity as an additional insured, and the officers, officials, employees, agents and/or volunteers of that public entity, as applicable, who may be named in the Schedule above, when you have agreed in a written contract or written agreement presently in effect or becoming effective during the term of this policy, that such public entity and/or its officers, officials, employees, agents and/or volunteers be added as an additional insured(s) on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
- Your negligent acts or omissions; or
 - The negligent acts or omissions of those acting on your behalf;

in the performance of your ongoing operations.

No such public entity or individual is an additional insured for liability arising out of the sole negligence by that public entity or its designated individuals. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.

B. Section III – LIMITS OF INSURANCE is amended to include:

8. The limits of insurance applicable to the public entity and applicable individuals identified as an additional insured(s) pursuant to Provision A.4. above, are those specified in the written contract between you and that public entity, or the limits available under this policy, whichever are less. These limits are part of and not in addition to the limits of insurance under this policy.

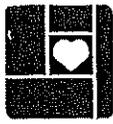
C. With respect to the insurance provided to the additional insured(s), Condition 4. Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is replaced by the following:

4. Other Insurance

a. Primary Insurance

This insurance is primary if you have agreed in a written contract or written agreement:

- (1) That this insurance be primary. If other insurance is also primary, we will share with all that other insurance as described in c. below; or



NONPROFITS INSURANCE

ALLIANCE OF CALIFORNIA

A Head for Insurance. A Heart for Nonprofits.

POLICY NUMBER: 2022-27040

- (2) The coverage afforded by this insurance is primary and non-contributory with the additional insured(s)' own insurance.

Paragraphs (1) and (2) do not apply to other insurance to which the additional insured(s) has been added as an additional insured or to other insurance described in paragraph **b.** below.

b. Excess Insurance

This insurance is excess over:

1. Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is fire, lightning, or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE.**
 - (e) Any other insurance available to an additional Insured(s) under this Endorsement covering liability for damages which are subject to this endorsement and for which the additional insured(s) has been added as an additional insured by that other insurance.
- (1) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the additional insured(s) against any "suit" if any other insurer has a duty to defend the additional insured(s) against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured(s)' rights against all those other insurers.
- (2) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (3) We will share the remaining loss, if any, with any other insurance that is not described in this **Excess Insurance** provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Methods of Sharing

If all of the other insurance available to the additional insured(s) permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any other the other insurance available to the additional insured(s) does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

The City of Huntington Beach, it's officers, elected or appointed officials, employees, agents and volunteers

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
 2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



CITY OF HUNTINGTON BEACH
2000 Main Street, Huntington Beach, CA 92648-2702

DECLARATION OF PERMITTEE

I certify that no vehicle(s) will be used or operated in the performance of the task(s) or event(s) for which this permit is granted.

I authorize the City of Huntington Beach to immediately and retroactively revoke the license or permit issued in connection with or in the performance of said task(s) or events(s) if any vehicle(s) is used.

Signature of Permittees: *Mike Adams Mary Louise Shattuck*

Print Names: Mike Adams and Mary Louise Shattuck

Company Name (if applicable): Huntington Beach Municipal Art Center Foundation

Date Signed: June 21, 2022



CITY OF HUNTINGTON BEACH
2000 Main Street, Huntington Beach, CA 92648

Declaration of Non-Employer Status

The State of California requires every enterprise or business to provide workers compensation insurance coverage. If you have no employees, you may make a declaration to that effect by completing and signing this form and returning to:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

I certify that in the performance of the activity or work for which this permit is issued, I shall not employ any person in any manner so as to become subject to California Workers' Compensation Insurance requirements.

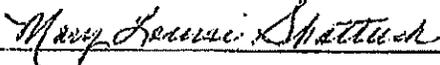
I authorize the City of Huntington Beach to immediately and retroactively revoke the license or permit issued under this declaration if I hire any employee(s) or become subject to the provision of the laws requiring Workers' Compensation Insurance.

Company Name: **Huntington Beach Municipal Art Center Foundation**

Address: **538 Main Street, Huntington Beach, CA 92648**

Applicants: **Mike Adams, & Mary Louise Shattuck**

Applicants' Signatures:

Title: **Co-Chairs, HBAC Foundation**

Date Signed: **June 21, 2022**

Telephone Number: **Mike 714-378-3060, Mary Lou 714-401-7607**