

INTRODUCED: April 24, 2023

AN ORDINANCE No. 2023-131

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Covenant of Purpose, Use and Ownership by the Maymont Foundation for the benefit of the United States Department of Commerce, Economic Development Administration for the purpose of enabling Maymont Foundation to accept \$8,000,000.00 from the United States Department of Commerce, Economic Development Administration for renovations to the Maymont House Museum and animal habitats.

\_\_\_\_\_  
Patron – Mayor Stoney  
\_\_\_\_\_

Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: MAY 8 2023 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Covenant of Purpose, Use and Ownership by the Maymont Foundation for the benefit of the United States Department of Commerce, Economic Development Administration for the purpose of enabling Maymont Foundation to accept \$8,000,000.00 from the United States Department of Commerce, Economic Development Administration for renovations to the Maymont House Museum and animal habitats. The Covenant of Purpose, Use

AYES: 9 NOES: 0 ABSTAIN: \_\_\_\_\_

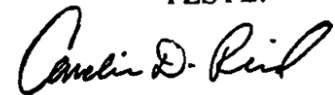
ADOPTED: MAY 8 2023 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

and Ownership shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

**A TRUE COPY:**

**TESTE:**

A handwritten signature in cursive script that reads "Carolin D. Reed".

**City Clerk**



# City of Richmond

## Intracity Correspondence

**O&R REQUEST**

**DATE:** March 31, 2023

**EDITION:** 1

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor

**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer

**THROUGH:** Reginald E. Gordon, Deputy Chief Administrative Officer for Human Services

**FROM:** Christopher E. Frelke, Director of Parks, Recreation & Community Facilities

**RE:** Covenant of Purpose, Use and Ownership by Maymont Foundation for the benefit of the United States Department of Commerce Economic Development Administration for acceptance by Maymont Foundation of grant funds from the Economic Development Administration for renovations to the Maymont House Museum and Animal Habitats.

**ORD. OR RES. No.** \_\_\_\_\_

**PURPOSE:** To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Covenant of Purpose, Use and Ownership (“Covenant”) by Maymont Foundation (the “Foundation”) for the benefit of the Economic Development Administration (“EDA”), an agency of the United States Department of Commerce, to enable the Foundation to accept grant funds in the amount of \$8,000,000.00 for the purpose of completing renovations to the Maymont House Museum and Animal Habitats, the conditions of said grant and Covenant including requirements that the property not be sold or conveyed and shall remain unencumbered, the owner of the property acknowledge the federal interest in the property, and the Covenant be properly recorded.

**REASON:** The EDA has awarded the Foundation a Grant Award in the amount of \$8,000,000.00 for renovations to the Maymont House Museum and Animal Habitats. As a condition of the Grant Award, the Foundation is required to execute a Covenant of Purpose, Use and Ownership with the EDA. In accordance with the Covenant, the property shall not be sold or conveyed and shall remain unencumbered for 15 years, the useful life of the renovations. Further, the City, as owner of the Maymont House Museum and Animal Habitats, in accordance with the Covenant, is required to acknowledge the federal interest in the property and agrees to properly record the Covenant.

**RECOMMENDATION:** The City Administration recommends approval.

**BACKGROUND:** The Foundation has administered and maintained Maymont Park on behalf of the City of Richmond since 1975. Since that time, the Foundation has made substantial improvements and renovations to the property. The Foundation applied for and received a Grant Award in the amount of \$8,000,000.00 from the EDA for renovations to the Maymont House Museum and Animal Habitats. The Museum renovations will include fire protection, HVAC systems, the roof, and appurtenances. The Habitat renovations will include the Bear, Fox, Bobcat, Coyote and Porcupine areas as well as the Raptor Valley Viewing Deck, Amphitheater and Barn Engagement Area. In consideration of the Grant Award, the Foundation has agreed to enter into a Covenant of Purpose, Use and Ownership with the EDA.

**FISCAL IMPACT / COST:** There is no impact or cost to the City. The total cost of the proposed renovations is \$10,000,000.00. EDA awarded a grant in the amount of \$8,000,000.00 to the Foundation through the American Rescue Plan Travel, Tourism, and Outdoor Recreation program with a required match of \$2,000,000.00 to be provided by the Foundation.

**FISCAL IMPLICATIONS:** There are no fiscal implications for the City. The project is fully funded by an \$8,000,000.00 grant from EDA with the required \$2,000,000.00 match to be provided by the Foundation.

**BUDGET AMENDMENT NECESSARY:** None.

**REVENUE TO CITY:** None.

**DESIRED EFFECTIVE DATE:** Upon adoption

**REQUESTED INTRODUCTION DATE:** April 10, 2023

**CITY COUNCIL PUBLIC HEARING DATE:** May 8, 2023

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Land Use, Housing and Transportation Committee on April 27, 2023

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** None.

**AFFECTED AGENCIES:** PRCF

**RELATIONSHIP TO EXISTING ORD. OR RES.:** None.

**REQUIRED CHANGES TO WORK PROGRAM(S):** None.

O&R Request

Page 3 of 3

---

**ATTACHMENTS:** Maymont Foundation Operating Agreement dated 12/4/1995  
U.S. Department of Commerce Financial Assistance Award to Maymont  
Foundation dated 8/2/2022  
Specific Award Conditions U.S. Department of Commerce Economic De-  
velopment Administration (EDA)  
Covenant for Purpose, Use and Ownership between Maymont Foundation  
and EDA

**STAFF:** Christopher Frelke, Director, PRCF, 646-1128  
Daniel Hazlett, Senior Management Analyst, PRCF, 646-7506

---

(Large top margin left to accommodate recording information, as necessary)

[Insert the "instrument prepared by" clause and contact information as required by local law]

### COVENANT OF PURPOSE, USE AND OWNERSHIP

This Covenant of Purpose, Use and Ownership ("Covenant") dated this \_\_\_\_\_ day of \_\_\_\_\_, 23, is made by Maymont Foundation with an address of 1000 Westover Road, Richmond, VA 23220 ("Recipient") for the benefit of the United States Department of Commerce, Economic Development Administration located at 1401 Constitution Avenue, NW, Washington, DC 20230 with a regional office at 900 Market Street, Room 602, Philadelphia, PA 19107 ("EDA"):

#### RECITALS:

WHEREAS, pursuant to the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3121 *et seq.*) ("PWEDA"), Recipient has applied to, received and accepted from EDA a Financial Assistance Award dated August 2, 2022, ("Award"), in the amount of Eight Million Dollars (\$8,000,000) ("EDA Award Amount") for EDA Award No. 01-79-15237; and

WHEREAS, the Award is subject to certain terms and conditions pursuant to which Recipient agreed to comply with, *inter alia*, the applicable requirements of EDA's regulations at 13 C.F.R. Chapter III and government-wide regulations set out at 2 C.F.R. part 200; and

WHEREAS, pursuant to the application submitted by Recipient requesting said Award, which includes all forms, documentation, and any information submitted to EDA as part and in furtherance of the request for the Award, including any information submitted after the initial application ("Grant Application") and pursuant to the Award, the EDA Award Amount is to be used for the purpose of financing the acquisition of and/or improvements to the real property described in "Exhibit A," attached hereto and made a part hereof (the "Project Property") consisting of Maymont House Museum and Animal Habitats, located in Richmond, VA (the "Project"); and

WHEREAS, \_\_\_\_ years from [the trigger date (e.g., date of award, construction end date, etc.)], as determined by EDA, is the Estimated Useful Life, as defined in 13 C.F.R. § 314.1, of the improvements made to the Project Property pursuant to the Project; and

WHEREAS, the Award provides, *inter alia*, that Recipient will not sell, lease, transfer, convey, encumber, mortgage, or otherwise alienate any right to or interest in the Project Property, or use the Project Property for purposes other than, or different from, those purposes set forth in the Award and the Grant Application made by Recipient therefor (“Project Purposes”), such alienation or use being prohibited by 13 C.F.R. part 314 and by 2 C.F.R. part 200; and

WHEREAS, in accordance with PWEDA, EDA is not authorized to permit transfer or conveyance of Project Property to parties that are not eligible to receive EDA grants unless EDA is repaid the Federal Share as defined at 13 C.F.R. § 314.5 (“Federal Share”) or unless the authorized purpose of the Award is to develop land in order to lease or sell the land for a specific use, approved in advance by EDA, in which case EDA may authorize a lease or sale of the Project Property or a portion thereof if certain conditions are met; and

WHEREAS, the owner of the Project Property agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of all or part of the Project Property.

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and to ensure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient consistent with the Project Purposes, Recipient hereby covenants and agrees as follows:

1. COMPLIANCE WITH AWARD AND REGULATIONS

Recipient shall comply with the terms and conditions of the Award and the regulations set forth in 13 C.F.R. Chapter III and 2 C.F.R. part 200.

2. RESTRICTIONS DURING ESTIMATED USEFUL LIFE

For the Estimated Useful Life set forth above, Recipient will not sell, lease, transfer, convey, encumber or mortgage any interest in the Project Property, nor shall Recipient use the Project Property for purposes other than the Project Purposes without the prior written approval of EDA.

3. LEASE OF PROJECT PROPERTY

If the Grant Application provides for and the Award authorizes Recipient to lease Project Property, each lease arrangement shall be subject to the prior written approval of EDA during the Estimated Useful Life. EDA must determine that the applicable lease arrangement is consistent with the Grant Application and authorized general and special purpose(s) of the Award; will provide adequate employment and economic benefits for the area in which Project Property is located; is consistent with EDA policies concerning, but not limited to, non-discrimination, non-relocation, and environmental requirements; and that the proposed lessee is providing adequate compensation, as defined in 13 C.F.R. § 314.1, to Recipient for said lease.

4. PROJECT PURPOSES AND TRANSFER OF PROJECT PROPERTY

Recipient further covenants that in the event the Project Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed, encumbered or mortgaged without the prior written approval of EDA, Recipient will compensate the Federal Government in the amount of the Federal Share, which amount shall be determined at the sole discretion of EDA, such amount being: (a) EDA's pro-rata share of the fair market value of the Project Property as further set forth in 13 C.F.R. § 314.5, as that provision may be amended from time to time, (b) the EDA Award Amount, or (c) the amount of grant funds actually disbursed.

5. CHARGES; LIENS

Recipient shall protect the title and possession of all Project Property and pay when due all taxes, assessments, mechanic and/or materialmen liens, and other charges, fines, and impositions now existing or hereafter levied or assessed upon the Project Property.

6. HAZARD INSURANCE

Recipient shall insure and keep insured all improvements now or hereafter created upon Project Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements but in no event less than the full replacement value of the improvements. Any insurance proceeds received by Recipient due to loss shall be applied to restoration or repair of any damaged Project Property, provided such restoration or repair is economically feasible. If such restoration or repair is not economically feasible, Recipient shall use said insurance proceeds to compensate EDA for its Federal Interest, as defined at 13 C.F.R. § 314.2 ("Federal Interest"). EDA's Federal Interest shall be satisfied when the amount received is equal to the Federal Share as that term is defined at 13 C.F.R. § 314.5.



7. PRESERVATION AND MAINTAINANCE OF PROJECT PROPERTY

Recipient shall keep Project Property in good condition and repair during the Estimated Useful Life and shall not permit or commit any waste, impairment, or deterioration of Project Property, but shall give written notice thereof to EDA without delay.

8. INDEMNIFICATION

To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project Property or construction, renovation, or repair of any facility on the Project Property, to the extent that such liabilities are incurred because of toxic or hazardous contamination of groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Federal Government or its agents) on the Project Property. *See also* 13 C.F.R. § 302.19 (“Indemnification”).

9. INSPECTION

EDA may make or cause to be made reasonable entries upon and inspection of Project Property by EDA or an authorized representative of EDA.

10. CONDEMNATION

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Project Property, or any part thereof, or for any conveyance in lieu of condemnation shall be used by Recipient to compensate EDA for EDA’s Federal Share. EDA’s Federal Share of said condemnation proceeds shall be equal to that percentage which the EDA Award Amount bore to the total project costs under the Award for which the condemned property was acquired or improved. *See also* 13 C.F.R. § 314.5 (“Federal Share”).

11. REMEDIES

Upon Recipient’s breach of any term or condition of the Award or term or condition of this Covenant, then EDA, its designees, successors, or permitted assigns may declare the amounts owed to EDA (i.e., the Federal Share) with interest thereon at the rate set forth in 31 U.S.C. § 3717, immediately due and payable, such amounts being: (a) EDA’s pro-rata share of the fair market value of the Property as further set forth in 13 C.F.R. § 314.5, as that provision may be amended from time to time, (b) the EDA Award Amount, or (c) the amount of the grant

funds actually disbursed (the "Indebtedness"). The amount shall be determined at the sole discretion of EDA in accordance with EDA's authorities and regulations, and Recipient agrees that the Indebtedness shall be due and payable by Recipient to EDA upon the termination of the Award for material noncompliance or upon any attempt to use, transfer or alienate any interest in the Project Property in violation of the Award or of the regulations in 13 C.F.R. Chapter III or 2 C.F.R. part 200 and does, moreover, agree that such Indebtedness shall be extinguished only through and upon the full payment of the Indebtedness to the Federal Government.

12. REMEDIES CUMULATIVE

EDA may enforce any and all remedies afforded by law or equity, including seeking and obtaining a judicial determination(s) compelling Recipient to comply with the terms and conditions of the Award and this Covenant, which may be exercised concurrently, independently or successively.

13. FOREBEARANCE NOT A WAIVER

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by EDA shall not be a waiver of EDA's rights under this Covenant.

14. RELEASE

EDA and the Recipient agree that, so long as the possession and use of Project Property by Recipient has been only for the purposes set forth in the Award and the Grant Application, then after the Estimated Useful Life of the improvements to Project Property, Recipient may request a release of the Federal Interest in accordance with 13 C.F.R. part 314, which will not be withheld except for good cause, as determined in EDA's sole discretion; provided, however, that in accordance with 13 C.F.R. part 314, restrictions upon the religious use or discriminatory practices in connection with the use of Project Property shall survive this Covenant and any release thereof, which shall be evidenced by a separate recorded covenant.

15. GOVERNING LAW; SEVERABILITY

This Covenant shall be governed by applicable federal law, if any, and if there is no applicable federal law by state law, and nothing contained herein shall be construed to limit the rights EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect

without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

16. RECORDING COVENANT AGAINST TITLE

Pursuant to 13 C.F.R. part 314, Recipient further agrees that Recipient shall execute and place on record against the title to the Project Property acquired or improved in whole or in part with the Award, this Covenant of Purpose, Use and Ownership. Recipient shall furnish EDA with the original, recorded Covenant as executed. Recipient further agrees that whenever the Project Property is sold, leased or otherwise conveyed pursuant to 13 C.F.R. part 314, Recipient or transferor shall add to the document conveying such interest in and to the real estate an express reference to this Covenant, satisfactory to EDA, whereby the purchaser or tenant expressly accepts and agrees to be bound by this Covenant.

17. NOTICE

Any notice from EDA to Recipient provided for in this Covenant shall be sent by certified mail to Recipient's last known address or at such address as Recipient may designate to EDA, except for any notice given to Recipient in the manner as may be prescribed by applicable law as provided hereafter in this Covenant. Likewise, any notice from Recipient to EDA shall be sent by certified mail to EDA's address.

18. PARTIES BOUND BY THIS COVENANT

This Covenant and this Covenant's rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

19. RESTRAINT ON TITLE

It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Project Property given to evidence and secure the Federal Interest expressed herein.

20. COVENANT RUNS WITH LAND

This Covenant shall run with the land.

21. AUTHORITY TO EXECUTE COVENANT

Recipient represents and warrants to and covenants with EDA that Recipient has been duly authorized by Recipient's governing body by all necessary action and has received all necessary third party consents to enter into this Covenant.

IN WITNESS WHEREOF, Recipient has hereunto set its hand as of the day and year first above written by its duly authorized officer.

RECIPIENT

\_\_\_\_\_

By:

\_\_\_\_\_

Title:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ on behalf of \_\_\_\_\_.

8/18/18

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the owner of the Project Property has hereunto set its hand as of the day and year first above written by its duly authorized officer for the sole purpose of acknowledging the federal interest in the Project Property and its agreement to record this Covenant.

OWNER OF THE PROJECT  
PROPERTY

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

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Approved as to Form: Keisha Dillard-Brady \_\_\_\_\_ Date 3/31/2023  
Keisha Dillard-Brady  
Senior Assistant City Attorney  
Richmond City Attorney's Office

**Exhibit A**  
**Property Description**

Maymont House Museum - 1700 Hampton Street, Richmond, VA  
23220

Animal Habitats - 2201 Shields Lake Drive, Richmond, VA 23220

GRANT     COOPERATIVE AGREEMENT

## FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER  
**01-79-15237; 119316**

RECIPIENT NAME  
**Maymont Foundation**

PERIOD OF PERFORMANCE  
**24 Months from grant award**

STREET ADDRESS  
**1000 Westover Road**

FEDERAL SHARE OF COST  
\$ **8,000,000**

CITY, STATE, ZIP CODE  
**Richmond, VA 23220-6819**

RECIPIENT SHARE OF COST  
\$ **2,000,000**

AUTHORITY  
Public Works and Economic Development Act of 1965, as amended, (42 U.S.C. Section 3121, et. seq)

TOTAL ESTIMATED COST  
\$ **10,000,000**

CFDA NO. AND NAME  
**11.307 Economic Adjustment Assistance**

PROJECT TITLE  
**Renovations to the Maymont House Museum and Animal Habitats**

**This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.**

DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (31 March 2017)

R & D AWARD

FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE

SPECIAL AWARD CONDITIONS

LINE ITEM BUDGET

2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101

48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES

MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIAL AWARD CONDITION.

OTHER(S): Department of Commerce EDA Standard Terms and Conditions for Construction Projects

ARPA OIG PowerPoint with fraud certification

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

**LINDA CRUZ CARNALL**

Digitally signed by LINDA CRUZ CARNALL  
Date: 2022.07.19 16:29:30 -04'00'

DATE

**07/19/22**

PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

**Matt Blakley, Director of Development**

*MBlakley*

DATE

**8/2/22**





SPECIFIC AWARD CONDITIONS  
U.S. DEPARTMENT OF COMMERCE Economic  
Development Administration (EDA)

---

**Construction Projects:** Public Works and Economic Adjustment Assistance Programs under Sections 201 and 209 of the Public Works and Economic Development Act, as amended, 42 U.S.C. §§ 3141 and 3149

---

<b>Project Title: Renovations to the Maymont House Museum and Animal Habitats</b>	
<b>Recipient Name: Maymont Foundation</b>	<b>Project Number: 01-79-15237</b>

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award as the *Authorized Scope of Work*. All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Form CD-451.

The *Authorized Scope of Work* for this project includes:

The project consists of the renovations to the Maymont House Museum and Animal Habitats in Richmond, Virginia. Project elements for the museum renovations include fire protection, HVAC systems, the roof and appurtenances. The Habitat renovations include the Bear, Fox, Bobcat, Coyote and Porcupine areas as well as the Raptor Valley Viewing Deck, Amphitheater and Barn Engagement Area.

The Recipient Contact's name, title, address, and telephone number are:

Mr. Matt Blakley Director of Development Phone: 1-804-358-7166 Email: <a href="mailto:mblakley@maymont.org">mblakley@maymont.org</a>	Maymont Foundation 1000 Westover Road Richmond, VA 23220-6819
---	---

2. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

Linda Cruz-Carnall Regional Director Phone: (215) 597-4603 Fax: (215) 597-1063 Email: <a href="mailto:lcruz-carnall@eda.gov">lcruz-carnall@eda.gov</a>	Economic Development Administration Philadelphia Regional Office Robert N.C. Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
--	--

3. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Christopher Christian Area Director Phone: (215) 597-8795 Fax: (215) 597-1063 Email: CChristian1@eda.gov	Economic Development Administration Philadelphia Regional Office Robert Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
--	---

4. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Megan Coll Civil Engineer/Environmental Officer Phone: (215) 597-8760 Email: mcoll@eda.gov	Economic Development Administration Philadelphia Regional Office Robert Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
---	---

5. **ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award (Form CD-450), the following additional documents are hereby incorporated by reference into this Award:

- i. EDA Standard Terms and Conditions for Construction Projects (March 22, 2021); and
- ii. The Recipient’s application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation.

Should there be a discrepancy among these documents, the Specific Award Conditions (this document), including any attachments, shall control.

6. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project Development Time Schedule:

Return of Executed Financial Assistance Award.....	30 calendar days after receipt of Form CD-450/CD-451
Start of Construction .....	12 Months from the Date of Award
Construction Completed .....	24 Months from the Date of Award
Authorized Award End Date. ....	24 Months from the Date of Award
Submission of Final Project Progress Report.....	No later than 120 calendar days from the Award End Date
Submission of Final Financial Documents (SF-425).....	No later than 120 calendar days from the Award End Date

Project Closeout – All project closeout documents, including final financial reports (Form SF-425 or any successor form) and any required program reports, shall be submitted to EDA not more than 120 calendar days after the date the Recipient accepts the completed project from the

contractor(s) unless an extension is granted in writing by the project officer, but in no event later than 120 days after the Award End Date.

The Recipient shall diligently pursue the development of the project so as to ensure completion within this time schedule and shall promptly notify EDA in writing of any event that could substantially delay meeting any of the prescribed time limits for the project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. §§ 200.338–200.342, as applicable.

## **7. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:**

**A. AWARD DISBURSEMENTS: Reimbursement basis only.** EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs incurred, after all preconditions set forth in these Specific Award Conditions have been met.

The “Request for Reimbursement” (Form SF-271 or any successor form) is used to request a disbursement, which must be approved in writing by the Project Officer.

Please note that prior to the initial disbursement, the Recipient must complete the attached Form SF-3881 (or any successor form) “ACH Vendor/Miscellaneous Payment Enrollment Form” and submit it to NOAA’s Accounting Office by FAX at (301) 528-3675. (FAX is required to secure confidentiality of sensitive information.) The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

### **B. REPORTS:**

*Project Progress Reports:* The Recipient shall submit project progress reports to the Project Officer on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof, until the final disbursement is made by EDA. Reports should be submitted using the approved EDA template, which will be provided by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than 1 month following the end of the quarterly period.

*Financial Reports:* The Recipient shall submit a “Federal Financial Report” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, for the entire project period. Form SF-425 and instructions for completing this form are available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>.

A final Form SF-425 must be submitted no more than 120 calendar days after the expiration date of the Award (i.e., the Award End Date specified on the Form CD-450 or a subsequently executed Form CD-451). Final Financial Reports should follow the guidance outlined in the instructions for submitting mid-term financial reports but should ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds

and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

- 8. ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Financial Assistance Award (Form CD-450), including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200.

Except as otherwise expressly provided for within these Specific Award Conditions, the Federal share of the allowable costs shall be based on the Investment Rate for the Award, as established on the Form CD-450 or any subsequent amendment (Form CD-451). In the event of an underrun in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate. The Federal share of total allowable costs shall not exceed the dollar amount specified on the original Award or any subsequent amendments.

**Line-Item Budget:**

- A.** Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Amount)	\$8,000,000
Non-Federal Matching Share	\$2,000,000
Total Project Cost	\$10,000,000

- B.** Under the terms of this Award, the total approved line-item budget is:

COST CLASSIFICATION	Approved
Administrative and legal expenses	\$40,000.00
Land, structures, rights-of-way, etc.	\$0.00
Relocation expenses and payments	\$0.00
Architectural and engineering fees	\$150,000.00
Other architectural and engineering fees	\$0.00
Project inspection fees	\$15,000.00
Site work	\$0.00
Demolition and removal	\$0.00
Construction	\$7,987,487
Equipment	
Miscellaneous	
Contingencies	\$1,807,513
Total Project Cost	\$10,000,000

- 9. MATCHING SHARE:** The Recipient agrees to provide the Recipient’s Non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for

such project expenses (see 13 C.F.R. § 300.3). By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project and will be available as needed for the project.

**10. REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** Treasury has given EDA two options for having payments deposited to EDA's account:

- A. The first is the [pay.gov](https://www.pay.gov) website. This option allows the payee to pay EDA through the internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- B. The second is paper check conversion. All checks must include on their face the name of the DOC agency funding the Award, the Award number, and a description of no more than two words identifying the reason for the check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
Finance Office, AOD, EDA Grants  
20020 Century Boulevard  
Germantown, MD 20874

The accounting staff will scan the checks into an encrypted file and transfer the file to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.
- EDA will not return your original check; the original will be destroyed, and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of \$25.00, which will be collected by EFT.

**11. CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five years of the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by that date and the Grants Officer determines, after consultation with the Recipient, that construction completion cannot

reasonably be expected to be completed promptly and expeditiously, the grant may be terminated. Extensions beyond the five-year project period are exceedingly rare and can only be authorized by the Assistant Secretary. Nothing in this paragraph is intended to alter the Project Development Time Schedule set out in paragraph 7, above.

12. **USEFUL LIFE:** The useful life of this project is hereby determined to be 15 years from the date of award.
13. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth at 41 C.F.R. part 60-4 establish goals and timetables for the participation of minorities and women in the construction industry. Those regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with those regulations and shall obtain compliance with 41 C.F.R. part 60-4 from contractors and subcontractors employed on the project by including such notices, clauses, and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. part 60-4. The goal for the participation of women in each trade area shall be as follows: from April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Specific Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80 of the Federal Register notice published October 3, 1980, at 45 Fed. Reg. 65984–65991, or any subsequently published amendments. The Recipient shall include the *Standard Federal Equal Employment Opportunity Construction Contract Specifications* (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

14. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.326.
15. **EVIDENCE OF GOOD TITLE:** Prior to advertising for construction bids, the Recipient shall provide an opinion of counsel, satisfactory to EDA, that the Recipient has acquired good and marketable title to land, free of all encumbrances, to all real property necessary for completion of the project, as well as any necessary rights-of-way, easements, State or local government permits, or long-term lease interests necessary for the completion of the project in accordance with 13 C.F.R. part 314.
16. **NONRELOCATION:** By accepting this Award of financial assistance, the Recipient attests that the EDA-funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award (see 13 C.F.R. § 300.3). In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements,

termination of the Award for convenience or cause, and disallowance of any costs attributable, directly, or indirectly, to the relocation.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project. EDA considers an employer to be a “primary beneficiary” if the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more permanent jobs so identified.

- 17. PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage at three, six, and nine years after an EDA investment. The Recipient must retain sufficient documentation so that they can submit these required reports. Failure to submit these reports may adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact the Recipient in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. The Recipient must ensure adequate and sufficient records are kept to support the methodology for computing initial job creation/retention and private investment estimates and all subsequent actual performance data, and must make this information available at EDA’s request, including in the event of an audit or performance site visit.

- 18. REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient’s application for this Award may have been submitted to the Government and signed by Recipient, or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, the Recipient hereby reaffirms and states that:

- i. All data in the application and documents submitted with the application are true and correct as of the date the application was submitted and remain true and correct as of the date of this Award;
- ii. The application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

- iii. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the application.

The term “application” includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

- 19. **PROOF OF PERMITTING:** Prior to advertising for construction bids, the Recipient shall provide satisfactory evidence to EDA that all permits required for the project have been received.
- 20. **SIMPLIFIED ACQUISITION THRESHOLD:** In accordance with OMB Memorandum M-18-18 (June 20, 2018), the Simplified Acquisition Threshold (see 2 C.F.R. § 200.88) and Micro-purchase Threshold (see 2 C.F.R. § 200.67) applicable to this Award are \$250,000 and \$10,000, respectively. The Recipient may utilize Small Purchase Procedures or Procurement by Micro-purchases, as applicable, for purchases below these thresholds (see 2 C.F.R. § 200.320).
- 21. **BUY AMERICAN POLICY:** Consistent with Executive Order 13858, “Strengthening Buy-American Preferences for Infrastructure Projects,” the Recipient is encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable under this Award.
- 22. **WASTE, FRAUD AND ABUSE:** Consistent with 2 CFR part 200, Recipient’s key personnel will take a training on preventing waste, fraud and abuse as provided with this Award Package. Key personnel include those responsible for managing the Recipient’s finances and overseeing any contractors, sub-contractors, or sub-grantees (for financial matters and/or general oversight related to this Project). Within sixty (60) calendar days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all Recipients whether or not designated in this Award as the Lead Recipient.

Further, Recipient will monitor award activities for common fraud schemes (hereinafter “Fraud Schemes”), such as but not limited to:

- 1. false claims for materials and labor,
- 2. bribes related to the acquisition of materials and labor,
- 3. product substitution,
- 4. mismarking or mislabeling on products and materials, and
- 5. time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.



- 23. PUBLIC COMMENTS:** Based on the application materials, EDA has made a Finding of No Significant Impact for this Project under the National Environmental Policy Act (NEPA). In accordance with NEPA and EDA policy, the Recipient has provided public notice of the Project and solicited comments from the public, but the comment period has only recently closed. EDA will consider all comments received during the required comment period, and reserves the right, in its sole discretion, to revise the Finding of No Significant Impact or to require additional environmental mitigation measures. Recipient agrees to comply with all conditions and to implement all mitigation measures that EDA may impose in response to public comments or to terminate the Award for convenience.
- 24. GRANT ADMINISTRATION PLAN:** Within sixty days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Project Officer a Grant Administration Plan that outlines how the Recipient will administer the EDA Award. The plan must include the following information:
1. The names, addresses, phone numbers, facsimile numbers, and email addresses of all personnel responsible for activities pertaining to the EDA Award, including compliance with grant conditions, processing payment requests to EDA, engineering and design activities, and inspection and legal services.
  2. A proposed detailed project implementation schedule. The schedule shall contain at a minimum, the following milestones:
    - a. Completion of final plans and specifications
    - b. Date all permits will be obtained
    - c. Advertisement for bids
    - d. Bid opening
    - e. Construction contract award
    - f. Pre-construction conference
    - g. Issuance of Notice-to-Proceed
    - h. Substantial completion date
    - i. Final completion date/acceptance by Owner
  3. A Project Financial Plan addressing how expenses will be paid prior to the disbursement of funds by EDA. The plan must also identify the person responsible for preparing payment requests to EDA. EDA funds will not be disbursed until all prerequisites set forth in these Special Award Conditions are satisfied and all necessary contracts are awarded
- 25. SECURITY AGREEMENT/FORM UCC-1:** The Recipient agrees to provide EDA with a Security Agreement, satisfactory to EDA, for any equipment purchased with funds from this Award for which the unit cost is \$5,000 or greater (collectively, the “Equipment”). Recipient further agrees to place a lien on the Equipment by filing with the appropriate public official in the Commonwealth of Virginia a Form UCC-1. The costs of preparing the Security Agreement and Form UCC-1 and for the filing and recording of the Form UCC-1 shall be paid by the Recipient. Recipient shall be responsible for taking necessary action, at Recipient’s expense, to ensure that the lien in favor of EDA remains perfected throughout the Useful Life of the Equipment and that the filing and recording of the Form UCC-1 do not expire.

**26. RECORDED MORTGAGE OR COVENANT:** To better memorialize and protect the Federal Interest in real property improved, in whole or in part, with the funds made available under this Award, Recipient shall, prior to the initial disbursement of grant funds, execute and cause to be recorded a first priority mortgage lien or Covenant of Purpose, Use, and Ownership or Notice of Federal Interest in favor of EDA. The choice of a mortgage or covenant or Notice of Federal Interest will be in the sole discretion of EDA, and the document shall be satisfactory to EDA in form and substance. Upon request by EDA, Recipient shall furnish an opinion of counsel for the Recipient that the mortgage or covenant or Notice of Federal Interest is a valid and enforceable agreement according to its terms and that it has been duly recorded in the appropriate office where mortgages are recorded for the applicable jurisdiction.

The Recipient further agrees that:

1. Except as provided in 13 C.F.R. § 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Government must be compensated by Recipient for the Federal Share of the value of the property.
2. If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal Share of the value of the property for the Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal Share, plus costs and interest.
3. The Federal Share of the value of the property is that percentage of the current fair market value of the property attributable to EDA’s participation in the project after deducting actual and reasonable fix-up and marketing expenses, as more fully defined at 13 C.F.R. § 314.5. The Federal Share excludes that value of the property attributable to acquisition or improvements before or after EDA’s participation in the project and not included in project costs.
4. The mortgage or covenant must remain in effect throughout the useful life of the Project.

**27. ARCHITECT/ENGINEER AGREEMENT:** Prior to incurring costs for architectural or engineering services, the Recipient shall submit to EDA for approval an Architect/Engineer Agreement that meets the requirements of EDA’s Summary of EDA Construction Standards, as well as the competitive procurement requirements set out at 2 C.F.R. §§ 200.317—200.326, as applicable. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.

**28. PROJECT INSPECTION AGREEMENT:** Prior to advertising for construction bids, the Recipient shall submit to EDA for approval a Project Inspection Agreement that meets the requirements of EDA’s *Summary of EDA Construction Standards*, as well as the competitive

procurement requirements set out at 2 C.F.R. §§ 200.317—200.326, as applicable. The agreement must provide for all construction inspection services required by the Recipient for the project.

**29. PROGRAM INCOME:** In affirming this Award, Recipient acknowledges that all revenues it derives from ownership of the EDA funded property improvements during the Useful Life of the project shall constitute Program Income. Recipient agrees to use Program Income generated from this project in the following order of priority: (a) Administration, operation, and maintenance of the project facilities during their Useful Life. (b) Economic development projects that are authorized for support by EDA, provided such projects are within the designated project region. Prior to the final disbursement of grant funds, the Recipient will develop and furnish to EDA for approval an income reutilization plan to demonstrate an intent that the funds generated from the EDA assisted project will be expended for the purposes set forth above. Any changes made to the plan during the Useful Life of the project shall also be submitted to EDA for review and approval. Recipient shall maintain records adequate to demonstrate compliance with the requirements of this paragraph.

---

---

The foregoing represents the true and correct version of Special/Specific Award Conditions for this EDA Grant Award.

## MAYMONT FOUNDATION OPERATING AGREEMENT

**THIS AGREEMENT**, made this 4th day of December 1995, by and between the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia, hereinafter called "City", and MAYMONT FOUNDATION, a non-profit charitable corporation organized under the laws of the Commonwealth of Virginia, hereinafter called "Foundation".

**WHEREAS**, Maymont Park was devised to the City of Richmond for certain purposes as expressed in the Wills of Sallie M. Dooley and Major James H. Dooley, and require that the property be used as a public park for the use and pleasure of the citizens of the City of Richmond and the residence known as Maymont Manor House located on the property and its furnishings be used as a museum; and

**WHEREAS**, the Foundation, in order to better provide for the educational and recreational needs of the citizens of the City through the use of the Park has since January 1, 1975 (the "Date of the Original Agreement"), administered and maintained the Park on behalf of the City; and

**WHEREAS**, the Foundation has made substantial improvements to the wildlife exhibits and nature center, constructed a children's farm and renovated present buildings and gardens and plans future construction of additional facilities to provide wider and more enriched public use of the Park; and

**WHEREAS**, the Foundation is willing to undertake additional capital fund drives and to participate with the City in a program of renovation, improvement, operation and maintenance of the Park and of the Maymont Manor House on the terms and conditions provided herein; and

**WHEREAS**, the Foundation and the City wish to make certain amendments to its existing agreement and to set them forth in the form of this new agreement.

**WHEREAS**, the City is authorized generally and specifically to enter into contracts to carry out its purposes within the guidelines established under applicable law.

**NOW THEREFORE,**

**WITNESSETH:**

That for and in consideration of the mutual undertakings of the parties and this agreement, the City and the Foundation hereby covenant and agree, each with the other, as follows:

1. **Condition and Effectiveness of Agreement.** The Foundation shall, for and on behalf of the City, manage, maintain, improve and operate Maymont Park and Maymont Manor House, hereinafter called "Park" as a public park and museum for the use and pleasure of the citizens for the City of Richmond upon the following terms and conditions:

2. **Duties of the Foundation.** The Foundation shall be responsible for the improvement, operation, and maintenance of the Park as provided herein, including without limitation, the maintenance of the Maymont Manor House and its furnishings as a quality period residence museum. Without limitation this shall include:

a. the making of all or part of the capital improvements and any such other capital improvements as may be in keeping with any subsequent general plan approved by the City Council upon the recommendation of the City Planning Commission, and

b. day to day operation and maintenance of the facilities and grounds.

The Foundation shall report annually to the City Manager on the operation of the Park, including the annual financial statements reported on by the Foundation's Independent Certified Public Accountants, on all expenditure for improvement, operation and maintenance of the Park and shall account fully for all funds advanced to the Foundation by the City for aid in such purposes. The books of the Foundation shall be open to inspection and audit by the City at reasonable times and at reasonable places upon written request of the City Manager.

3. **Powers of the Foundation.** In carrying out these duties, the Foundation may act through its officers, employees or agents and such persons shall not thereby be deemed to be employees of the City. The Foundation may also contract as an independent agent with third parties for goods and services in connection with the discharge of its duty and the City shall not thereby become the principal under such contract, but shall be only a third party beneficiary thereunder.

The foundation shall have full discretion in controlling ancillary matters in carrying out its duties hereunder within the standards and guidelines established in this agreement. Without limitation, the Foundation shall have the power to impose reasonable restrictions as it may deem necessary or desirable to protect the general rights of the public to access at reasonable times and for reasonable purposes, including the right to establish opening and closing hours of the Park and exhibits therein. The Foundation shall make no charge for admission to the Park generally nor for admission to any facility existing on the Date of the Original Agreement, but it may, at its discretion, collect reasonable fees for admission to any new facilities constructed by it with its own funds since the Date of Original Agreement or to any facility which has been or is substantially renovated by the Foundation. The Foundation may also contract with others to operate certain ancillary concessions thereon, and such persons may charge for meals, goods or services offered for sale to the public therefor. All net proceeds received by the Foundation shall be used exclusively for improvement, operation and/or maintenance of the Park.

Nothing contained herein shall operate to transfer or diminish the power of the City to enforce the needful rules and regulations for the preservation of order, safety and decency in the Park and Maymont Manor House, but such rules and regulations applicable to public parks and buildings adopted by the City pursuant to Section 16.05 the Charter of the City or otherwise shall continue in full force and effect with respect to all of the property covered by this agreement.

4. Duties of the City. So long as this agreement is in force, the City shall, to the extent that funds are appropriated for the purpose, pay to the Foundation annually for its services as provided hereunder the sum of at least \$125,000, such payment to be made in equal quarterly installments. The City may appropriate, from time to time, such additional funds for the improvement, operation or maintenance of the Park as it should desire. The Foundation is hereby authorized to apply for Federal or State funds or other public funds for the improvement or operation of the Park and the City shall cooperate in any such application. The Foundation shall use all such funds exclusively for the improvement, operation and/or maintenance of the Park.

4.10. Board of Directors of Maymont Foundation - Representatives of the City. The Director of Recreation and Parks of the City shall be a member of the Board of Directors of the Maymont Foundation and the Mayor of the City shall designate one member of the City Council and one member of the City Planning Commission to serve on the Board of Directors of the Foundation for

a term coinciding with their term of office as a Councilman and as a Planning Commissioner respectively.

4.20. **Review and approval of plans by the City Planning Commission.** All plans for the physical development of Maymont Park shall be submitted to the City Planning Commission for review in accordance with the provisions of Chapter 17 of the Charter of the City of Richmond before such development is undertaken.

5. **Maymont Manor House Property.** The Maymont Manor House and all of its furnishings existing on the Date of the Original Agreement will continue to be owned and insured by the City of Richmond. Any subsequent additions to the furnishings of the house has been or will be deeded to the City or kept by the Foundation, as the case may be. If deeded to the City, they will be added to the City's insurance. If kept by the Foundation, insurance will be the responsibility of the Foundation. Such insurance provided by either party shall include the other party as an additional insured or contain a waiver of rights of subrogation against such party.

An inventory has been maintained and will be continued, approved by both parties, and attached as an addendum to this agreement, which will show the furnishings owned by the City and the furnishings owned by the Foundation.

5.10. **Other buildings and permanent fixtures.** All existing buildings, habitats and other permanent structures and fixtures included therein, will be owned and insured by the City. All additions and improvements of such buildings, fixtures, as well as equipment of a permanent nature, will be owned and insured by the City. All other equipment will be owned by the Foundation and insured by it. In addition all motor vehicles will be owned by the Foundation and insured by it. Such insurance provided by either party shall include the other party as an additional insured or contain a waiver of rights of subrogation against such party.

5.20. **Animals.** All animals will be the property of the Foundation. If insured, they will be insured by the Foundation. Such insurance provided by either party shall include the other party as an additional insured or contain a waiver of rights of subrogation.

5.30. **Utilities.** All utilities, i.e., water, gas, sewage, electricity will be purchased by the Foundation.

5.40. **City Services.** The City will continue to provide without charge, through its Urban Forestry Division, services to remove dead trees or hazardous limbs. The Department of Public Works, at the request of the Foundation, will continue to collect without charge refuse at the Hampton Street entrance to the Park. This will be the standard service.

6. **Term of Agreement.** Unless otherwise terminated as provided herein, this agreement shall continue until it automatically terminates on December 31, 2025.

6.10. **Termination by City.** The agreement may be terminated by the City by reason of the misfeasance or nonfeasance of the Foundation in the performance of its duties under this agreement at any time upon 180 days written notice. Such termination shall only be effective upon the completion of (i) written notice by the City of the Foundation's misfeasance or nonfeasance, (ii) if requested by the Foundation, 60 days during which the Foundation may cure the alleged misfeasance or nonfeasance and (iii) if non-binding arbitration is requested by either party, 60 days after any decision of the panel of arbitrators that find misfeasance or nonfeasance. Such panel shall consist of three arbitrators. Each party shall choose one arbitrator and the two chosen arbitrators shall choose a third. The panel shall make decisions by the affirmative vote of a majority of its members. After the appropriate period for cure or arbitration, if requested, either party may pursue any remedy available in a court of competent jurisdiction for a judgment declaring the existence or non-existence of misfeasance or nonfeasance within the meaning of this agreement.

6.20. **Termination by Foundation.** The Foundation may at any time upon 180 days written notice terminate this agreement.

6.30. **Effect of Termination.** In the event of termination, all funds advanced to the Foundation by the City for improvement, operation and maintenance of the Park and not disbursed by the Foundation for such purpose by the date of termination shall be returned by the Foundation to the City within 60 days of the event of termination.

7. **Nonassignability and Severability.** This agreement is not assignable by the Foundation without prior written consent of the City. The provisions of this agreement are severable; the invalidity of any provision hereof shall not affect the validity of any other provision contained in the contract.

8. **Maintenance and Repair of Facilities.** The Foundation shall at all times maintain the Park and improvements thereon to the reasonable satisfaction of the City Manager and make such repairs in accordance with plans approved by him.

9. **Indemnification.** [a] The Foundation shall indemnify, reimburse and save the City harmless from all charges, damages or costs that the City may be required to pay or otherwise sustain by reason of the construction of improvements, repair, maintenance and



operation of the Park and by reason of any person, firm or corporation being injured or damaged in any way in person or property by such actions of the Foundation. The Foundation will defend the City in any suit at the cost of the Foundation, and in event of a final judgment being obtained against the City, either independently or jointly with the Foundation, then the Foundation will pay such judgment with all costs and hold the City harmless therefrom.

[b] The Foundation will insure its liability in connection with the construction of improvements, repair, maintenance and operation providing indemnities of not less than \$1,000,000 for bodily injury to any one person in any one occurrence and of not less than \$1,000,000 for all bodily injuries resulting from any one occurrence and of not less than \$1,000,000 for property damage. The City shall be named an additional insured under the insurance contract. The Foundation shall keep the insurance in full force and effect at all times during the term of this agreement.

The Foundation shall provide the City with a certificate of such insurance which shall contain a statement that the insurance is provided to enable the Foundation to perform its obligations under this section and that the insurance will not lapse or otherwise expire prior to 90 days written notice given by the Foundation's insurance carrier to the City Manager of the City anything in such insurance contract to the contrary notwithstanding.

The City reserves the right to review the insurance requirements every three years and to request different limits and/or coverage. In such event, the Foundation and the City agree to determine mutually satisfactory limits and/or coverage with respect to such insurance.

IN WITNESS WHEREOF, the parties, being authorized to do so,  
have executed this agreement this 4th day of December  
1995.

**AUTHORIZED SIGNATURE**

City of Richmond

Signature Robert C. Bobb

Typewritten Name: Robert C. Bobb  
Title: City Manager

Address for Giving Notices  
Department of Recreation & Parks  
900 East Broad Street  
Richmond, Virginia 23219

Maymont Foundation

Signature John B. Daly

Typewritten Name: John B. Daly  
Title: President

Address for Giving Notices  
Maymont Foundation  
1700 Hampton Street  
Richmond, Virginia 23220

Approved to Form:

Signature N. S. Sales  
Asst. City Attorney