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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2009 JUL -2 PM 7:13

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Office of Parks and Recreation
DATE: July 14, 2009

RE: A Resolution Authorizing the City Administrator to 1) Execute an Agreement for the Cooperative Solicitation of Private and Public Funding to be Used for Capital Improvements for Office of Parks and Recreation Projects, Programs and Services Throughout the City of Oakland, and for the Improvement of City Owned Park Grounds and Facilities, Between the City of Oakland and Friends of Oakland Parks and Recreation, for a Three Year Term, with Two Consecutive Three Year Options to Renew, and to Provide Friends of Oakland Parks and Recreation Non-Exclusive Use of the Lakeside Park Marsha J. Corprew Memorial Garden Center Located at 666 Bellevue Avenue; and 2) to Waive the Competitive Bidding Process for this Agreement

SUMMARY

Staff has prepared a report and resolution requesting Council adopt the agreement between the City of Oakland (City) and Friends of Oakland Parks and Recreation (FOPR), a 501(c)(3) California nonprofit organization, for the purpose of securing private and public funding for capital improvements to parks and recreation projects, acceptance of donations such as labor, equipment, and other such goods so as to improve City owned park grounds and park facilities throughout Oakland, and to clarify the respective roles of the City of Oakland and FOPR in the management and development of specific City parks projects.

Adoption of the resolution supports public/private partnerships, codifies the specific relationship between the City and FOPR, and supports the City in securing much needed infrastructure funding for City owned park facilities and grounds.

FISCAL IMPACT

Action on this report has no immediate fiscal impact. Approval of the agreement will allow FOPR to raise and leverage the funds required to address much needed capital improvements at many Office of Parks and Recreation (OPR) recreation facilities and parks throughout the City of Oakland.

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BACKGROUND

Friends of Oakland Parks and Recreation is a non-profit organization, with a volunteer board of directors, whose 27 year mission has been to improve the quality of life for all Oakland citizens by generating funding and support for projects and programs which enhance and supplement recreational, environmental, educational, beautification and leisure activities offered through Oakland parks and recreation centers. This is accomplished by providing grants that foster environmental education, enhance recreation experiences, expose children and youth to traditional and non-traditional sports programs and encourages beautification projects at Oakland parks; promotes community gardens; or rehabilitates or maintains parks and recreation facilities.

Over the last 20 years FOPR has retrofitted over 55 playgrounds and ball fields throughout Oakland and provided over 150 grants to worthy programs. In 2002 alone FOPR funded 14 grants providing scholarships for camps, funded boating and swim lessons, and supplemented sporting programs such as Pee-Wee basketball and softball, to name a few. FOPR is committed to serving Oakland's diverse community and works with like-minded partners, to address facilities and programs most in need.

As municipal finances tighten, cities must explore new partnerships to achieve their goals — whether it is to build libraries, recreation centers, art galleries, boathouses, or any number of other facilities. These efforts are critical and must involve a combination of public and private funds. With the shrinking dollars in Capitol Improvement and PAYGO funds over the next few years, the timing is perfect to engage City management and staff in the development of fundraising efforts with private citizens, businesses, foundations, and State and Federal grants to seek opportunities to continue to complete and develop projects throughout the City. The proposed agreement between the City of Oakland and FOPR meets these needs and spells out the responsibilities of each party.

For over a year, OPR has worked with the FOPR Executive Director and Board, the Public Works Agency and the Community and Economic Development Agency to create an agreement and gain consensus on what the agreement should contain. The result of the meetings and discussions is reflected in the attached agreement and resolution.

KEY ISSUES AND IMPACTS

FOPR is committed to working cooperatively with private entities, endowments, foundations, various public agencies, and others to foster the public private partnerships essential to realizing the overall vision of Oakland as a model city and ensuring accessibility to parks and recreational opportunities to all.

As part of the agreement, FOPR agrees to meet with the City semi-annually to establish and review project priorities for funding to ensure the projects meet the needs and established goals

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of the Mayor and City Council. FOPR will actively pursue funding from private foundations and partner with the City on State and Federal funding opportunities for projects listed on the City's adopted parks prioritization list, consistent with the City's adopted policies and priorities for Capital Improvements.

City shall compensate FOPR, as defined in the Agreement, on City approved projects for which FOPR has raised private funding or had a part in securing State or Federal funding. City agrees to pay FOPR a fee based on City approved work executed by FOPR in either the writing of the grant or for work performed after grant funds are awarded, such as, but not limited to community needs assessment and outreach. Any payment to FOPR shall be paid from grant proceeds, if the grant so permits. If the grant prohibits such payment no payment shall be made to FOPR. Additionally, if no grant is forthcoming, no payment shall be made to FOPR.

FOPR has a long tradition of providing outside funding support to OPR by acting as its fiscal sponsor. As demonstrated by the Raimondi Field and Frog Park projects, among others, FOPR continues to be very successful in obtaining infrastructure funding for City owned parks and recreation facilities improvement projects. FOPR has the ability to identify and bring funding sources to the City at no expense to the City. It is because of this unique value that staff is requesting the competitive bidding process for this Agreement is waived.

PROJECT DESCRIPTION

The purpose of the agreement between the City and FOPR supports the goal of public/private partnerships, validates the relationships between the City and FOPR, and supports overall efforts to secure much needed infrastructure funding for City owned parks and recreation facilities. The entire community will benefit by this agreement, as FOPR focuses on the improvement of parks, recreation facilities and amenities citywide, with special attention to the parks and park facilities most in need.

SUSTAINABLE OPPORTUNITIES

Economic: Data continues to indicate that improved parks and quality programs add to the economic value of a community. In addition, FOPR is a local nonprofit agency whose Executive Director is an Oakland resident. All funds secured by FOPR are for recreation programs in Oakland and capital improvements are specifically for City of Oakland parks.

Environmental: If approved, this agreement would provide the City with an opportunity to implement green practices at the parks, increasing the efficiency with which sites use energy, water, and materials, and increase positive impacts on human health and the environment through design, construction, operation, and maintenance of the parks.

Social Equity: FOPR works to improve parks throughout Oakland, with a specific focus on parks in underutilized neighbors that have a high need for recreational programming for youth. This agreement will support potential efforts to increase the opportunity for play citywide, in addition to the creating a healthy city.

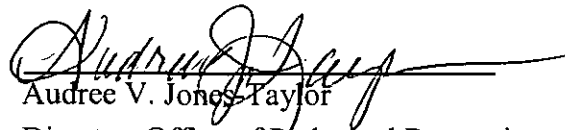
DISABILITY AND SENIOR CITIZEN ACCESS

Any improvements to City owned facilities would conform to the requirements of the Americans with Disabilities Act, the Older American Act, and other applicable laws.

ACTION REQUESTED OF THE CITY COUNCIL


Staff requests that Council adopt the resolution authorizing the City Administrator to execute an Agreement between the City of Oakland and Friends of Oakland Parks and Recreation, for cooperative solicitation of private and public funding to be used for capital improvements for Office of Parks and Recreation projects, programs and services throughout the City of Oakland, and for improvements of City owned park grounds and facilities, and waive the competitive bidding process for this Agreement; and provide Friends of Oakland Parks and Recreation non-exclusive use of Lakeside Park Marsha J. Corprew Memorial Garden Center located at 666 Bellevue Avenue.

Respectfully submitted,


Audree V. Jones-Taylor
Director, Office of Parks and Recreation

Prepared by:
Dana Riley, Assistant to the Director
Office of Parks and Recreation

APPROVED AND FORWARDED TO THE
LIFE ENRICHMENT COMMITTEE:


Office of the City Administrator

Attachments:

Exhibit 1: Agreement Between The Friends of Oakland Parks and Recreation
and City of Oakland

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AGREEMENT
BETWEEN
THE FRIENDS OF OAKLAND PARKS AND RECREATION
AND
CITY OF OAKLAND

Revised on June 30, 2009

AGREEMENT

Between

THE FRIENDS OF OAKLAND PARKS AND RECREATION AND CITY OF OAKLAND

This Agreement is made and entered into this ____ day of _____, 2009, between the CITY OF OAKLAND, a municipal corporation("CITY") and FRIENDS OF OAKLAND PARKS AND RECREATION, a California nonprofit corporation (as defined by Internal Revenue Code 501 (c)(3)), ("FOPR") for the cooperative solicitation of private and public funding for capital improvements of parks and recreation projects; acceptance of donations such as labor, equipment, or other such goods to improve CITY park facilities; and to clarify the respective roles of CITY and FOPR in the management and development of certain CITY park projects.

RECITALS'

- A. FOPR is a 501(c)(3), City of Oakland L/SLBE certified non-profit dedicated to improving parks and recreational opportunities in Oakland and improving the quality of life for all Oakland residents and others who utilize these facilities; and
- B. FOPR is dedicated to working cooperatively with CITY and its agencies to create sustainable public/private partnerships, including but not limited to, the Office of Parks and Recreation ("OPR"), the Public Works Agency ("PWA"), and the Community and Economic Development Agency ("CEDA"); as well as non-city organizations; and
- C. FOPR is committed to working cooperatively with private entities, endowments, foundations, various public agencies and other such entities to foster public/private partnerships essential to realizing the vision of Oakland as a model city and ensuring accessibility to parks and recreational opportunities for all; and
- D. FOPR has a proven track record of actively soliciting funds for parks and recreation capital projects within the City of Oakland from public and private sources; and
- E. FOPR has access to private funding sources and other entities to which CITY may not have access; and
- F. It is beneficial for CITY and FOPR to work collaboratively and in their respective areas of expertise to improve and enhance Oakland's park facilities and enhance and increase recreational programs throughout Oakland; and
- G. CITY and FOPR wish to document their long standing relationship, which supports and funds park improvement projects and the services and activities of OPR, so that

FOPR can continue to act as a fiscal sponsor for the benefit of CITY and to receive and expend grant funds and donations for OPR's programs, facilities, and services;

NOW THEREFORE, in consideration of the above recitals and performance of the respective covenants contained in this Agreement, CITY and FOPR agree that they shall partner in seeking funding for park capital improvement projects and in sustaining CITY activities, especially those managed by OPR, pursuant to the following terms and conditions:

I. TERM:

This Agreement shall be for a term of three years with two three-year options to renew at the discretion of CITY, which options would extend this Agreement for a possible term of nine years.

II. PARKS IMPROVEMENT PROJECT FUNDING AND MANAGEMENT

1.) FOPR Agrees to:

- a) Meet with OPR, PWA and CEDA at least semi-annually to establish and review project priorities for funding, ensuring the projects meet the needs and established goals of the Mayor and Oakland City Council.
- b) Actively seek funding from private foundations and other non-governmental organizations for projects that meet the following criteria:
 - (i) Are listed on CITY's currently adopted park prioritization list or on CITY's unfunded park priority list.
 - (ii) Are consistent with CITY'S adopted policies and priorities for Capital Investment, including Council Resolution No. 78747 C.M.S. (Prioritization Criteria Policy) and Resolution No. 80510 C.M.S. (Maintenance Considerations for Park Projects funded by the Landscape, Lighting and Assessment District).
- c) At CITY'S sole discretion and with CITY's written approval, FOPR may partner with CITY on potential State and Federal sources of funding for projects meeting the criteria as set forth above.
- d) Obtain written approval of the concept plan for new projects from OPR, CEDA PWA, Parks Maintenance Division and the Office of the City Administrator's ADA Programs Division before seeking private funding for such projects.
- e) Incorporate feedback and recommendations of PWA's Park and Building Maintenance Division to focus on deferred maintenance as a top priority.
- f) Provide OPR with monthly reports on FOPR's funding solicitation efforts on behalf of the CITY and provide OPR with an annual report, which shall be included with OPR's annual report to the Oakland City Council setting forth all funds received for the prior year.

2.) City Agrees to:

a) Cooperate in and support FOPR's solicitation of private funds as well as potential partnerships to enhance State and/or Federal Grant applications for CITY projects that are consistent with project priorities as agreed in section 1b above.

b) On projects for which FOPR has raised private funding or had a part in securing State or Federal funding, on CITY approved applications, CITY agrees to pay FOPR a fee based on CITY approved work implemented by FOPR in either the writing of the grant or for work performed after grant funds are received. Any payment to FOPR shall be paid from grant proceeds, if the grant so permits. If the grant prohibits such payment no payment shall be made to FOPR. Additionally, if no grant is forthcoming, no payment shall be made to FOPR. Fee shall be based on the following:

(i) CITY shall pay FOPR three percent (3%) of funds raised per grant that FOPR had a part in securing by submitting or partnering on submitting the grant application, which includes but is not limited to applying for the grant, writing the grant application, submitting the application, and successfully advocating for the application. The fee to FOPR will be paid from grant funds that have been received. This payment is subject to any prohibitions contained in a grant.

(ii) CITY shall pay to FOPR a negotiated amount for work performed by FOPR **after** grant funds are received. The Parties shall negotiate the amount payable to FOPR for its time, effort and skill in any area of work, such as, but not limited to community needs assessment and outreach. CITY may release, from grant funds, up to \$50,000 per project to be paid to FOPR for this work. A negotiated fee that exceeds \$50,000, to be paid to FOPR, requires prior approval by City Council. This fee shall be documented as part of a Project Agreement and subject to any specific grant limitations on administrative and/or overhead costs.

III. FACILITIES, RENT PAYMENT AND UTILITY CHARGES:

1.) FOPR's administrative offices shall be located at the Lakeside Park (Marsha J. Corprew Memorial) Garden Center, 666 Bellevue Avenue, a City-owned facility overseen by OPR. The initial Base Rent Payment for the office space at the Garden Center designated as Library in Exhibit "B" shall be Three Thousand Dollars (\$3,000) per year, in addition to the costs set forth in section III.7, payable by December 31st of this year and every year thereafter of this

Agreement. Use of office space directly supports OPR and will be reviewed annually by both parties.

All Rent payments shall be payable to the City of Oakland and remitted to the Office of Parks and Recreation, Attention: **OPR Fiscal Manager, Accounting Dept., 250 Frank H. Ogawa Plaza, 3rd Floor, Suite 3330, Oakland, CA 94612**

- 2.) Beginning January 1, 2011 and for each and every year thereafter if the Agreement is extended by CITY, the Rent shall be adjusted annually based on the relative percentage change in the Consumer Price Index (CPI) of all Urban Consumers, All Items, San Francisco – Oakland Metropolitan Area (Index) published by the United States Department of Labor Statistics from the previous year. The Index in effect on the date of the beginning of the Agreement Period (“Beginning Index”) and the Index published immediately before the adjustment date (“Ending Index”) shall be used to calculate the annual adjustment. If the Ending Index has increased over the Beginning Index, the Rent shall be calculated by multiplying the Rent by a fraction consisting of the Ending Index as the numerator and the Beginning Index as the denominator. This means that the Annual Rent shall be multiplied by the fraction consisting of the then Ending Index (which shall be the numerator) divided by the Beginning Index (which shall be the denominator). If the Index is changed, the Index shall be converted in accordance with any conversion factor published by the United States Department of Labor Statistics. If the Index is discontinued, the government’s replacing index shall be used in order to obtain substantially the same result that would have been obtained if the Index had not been discontinued. Irrespective of the actual annual change between Beginning Index and Ending Index, the annual adjustment to the Rent shall not exceed 8% per annum and shall not be less than 4% per annum.
- 3.) FOPR acknowledges that CITY incurs collection and administrative costs associated with pursuing delinquent rent payments. Parties hereby agree that if the rent payment for a year is not received by CITY before 5:00 p.m. on December 31 of the due year, FOPR shall pay a late charge equal to ten percent (10%) of the base rent payment rate in effect. If the late charge is not paid in a timely fashion, the amount owed will be added to the succeeding payment.
- 4.) FOPR will be authorized to use the Garden Center or another agreed upon OPR venue for (a) FOPR’s monthly board meetings held in the Garden Room on the third Wednesday of each month, (b) one annual meeting, and (c) use of the Garden Center, or other agreed-upon OPR venue, once annually on an agreed-upon date for an FOPR fundraiser, and (d) for the use of community meetings when mutually agreed by OPR.
- 5.) OPR will provide associated room setup for the FOPR monthly board meetings and annual meeting.

- 6.) CITY will provide routine maintenance of the office space. FOPR is solely responsible for keeping the office space in a clean and professional manner including proper disposal of garbage and boxes. No items are to be stacked or left outside office door or in building foyer.
- 7.) Telephone, cable and internet service fees shall be the sole responsibility of FOPR to pay and shall be billed directly to FOPR. Utilities including only water, natural gas, electricity and garbage will be paid for by CITY.
- 8.) If it becomes necessary for CITY to terminate use by FOPR of such office space, CITY shall give FOPR a minimum 90-day written notice of such termination.

IV. RESPONSIBILITIES:

- 1.) To the best of its ability, FOPR shall raise and administer funds to help support OPR programs, services, and facilities.
 - a) FOPR will allocate a minimum of 60% of its granting dollars to fund OPR programs and services annually.
- 2.) FOPR will obtain written authorization from OPR Director prior to setting up a fiscal account for any program or site in the name of OPR.
- 3.) FOPR shall provide grant opportunities for projects and programs at CITY's parks and recreation centers to the best of its ability.
- 4.) FOPR will provide grant funding for projects and programs within CITY's parks and recreation centers in three cycles each year in the Spring, Summer and Fall, as financially able. FOPR will (a) notify CITY of all grant applications received from CITY recreation centers, (b) award grants based upon its own criteria and notify CITY of any awards to CITY recreation centers or organizations, and (c) maintain and abide by the rules, regulations and procedures necessary to maintain FOPR's 501(c) (3) nonprofit status.
- 5.) In order to fund programs and projects in CITY's parks and recreation centers, FOPR solicits donations from private foundations and non-governmental organizations. FOPR will not compete with CITY for donations, grants, or other sources of funding when it has been deemed to be in direct competition with CITY or is not in CITY's or Park Programs' best interest.
- 6.) FOPR will include the Director of OPR, and or designated OPR employee, the Deputy Director of the Public Works Agency in charge of Parks Maintenance and the Deputy Director of CEDA in charge of Engineering & Construction, in the planning and decision-making process for all projects related to OPR programs and facilities through its monthly Board of Director's meetings and minutes. FOPR and OPR shall collaborate on marketing and publicity projects

to help publicize FOPR fundraising events and activities that support the efforts of FOPR and OPR.

- 7.) FOPR shall comply with State accounting and audit requirements for nonprofit organizations, including any updates and modifications to maintain its 501(c)(3) status.
- 8.) FOPR shall provide requested City related records to CITY within ten (10) working days of receipt of CITY's request and shall permit CITY access to its books and records for any CITY-administered fiscal and grant accounts. These accounts shall be made available for audit at CITY's expense.
- 9.) INSURANCE REQUIREMENTS. FOPR shall provide to CITY proof of insurance (or self-insurance) for the activities covered by this Agreement. FOPR shall comply with and execute the insurance requirements listed in Schedule Q attached hereto as Exhibit A and made a part of this Agreement.
- 10.) INDEMNIFICATION. FOPR agrees to protect, defend (including any third party lawsuits), indemnify, and hold harmless CITY, its Council Members, officers, agents, and employees from any and all claims, demands, actions or damages arising out of the performance of this Agreement by the FOPR, its contractors, and their respective subcontractors, vendors, guests, and invitees to which CITY may be subjected, except for those claims, demands, actions or damages resulting from the negligence or willful misconduct of CITY, its *Council Members, officers, agents, and employees.*
- 11.) The annual meeting of the FOPR's board of directors shall be open to the public, with notice of said meetings appearing on the OPR website. Minutes of all Board meetings and financial statements shall be made available on request and shall not be unreasonably withheld.
- 12.) The following protections against conflict of interest will be upheld:
 - a) FOPR certifies that no member of or delegate of the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising here from.
 - b) FOPR certifies that no member, officer, or employee of CITY or its designees or agents, and no other public official of the CITY who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any financial interest as defined by the Political Reform Act of 1974, indirect or direct in this Agreement or in its proceeds during his/her tenure or for one year thereafter. However, the Director of OPR shall be allowed to sit on the FOPR Board of Directors and all committees (with the exception of the Executive Committee) as an ex-officio member.

- c) FOPR certifies that no one who has any financial interest in this Agreement or receives compensation for the services from FOPR is related by blood or marriage within the third degree to the Mayor or any one or more of the members of the City Council, City Administrator, or the head of the department (OPR) to which these services are to be provided pursuant to this Agreement.
- 13.) PERSONNEL AND SUBCONTRACTORS. FOPR has, or will secure at its expense, all personnel required to perform the responsibilities as set forth in this Agreement. All persons retained by FOPR shall possess the requisite licenses and permits necessary. FOPR shall provide CITY with the name, address, and telephone number of each supplier prior to FOPR beginning work under this Agreement.
- 14.) ASSIGNMENT. FOPR shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement, either in whole or in part, without the prior written approval of CITY. CITY shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement, either in whole or in part, without the prior written approval of FOPR.
- 15.) NON-DISCRIMINATION/EQUAL EMPLOYMENT. FOPR shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, FOPR agrees as follows:
- a) FOPR and FOPR's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b) FOPR and FOPR Subcontractors, if any, shall state in all solicitations or advertisements for employees placed by or on behalf of FOPR that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
 - c) FOPR shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act.

- d) If applicable, FOPR will send to each labor union or representative of workers with whom FOPR has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of FOPR's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

16.) LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM (L/SLBE)

- a) *Requirement* – There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. All contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by City of Oakland in order to earn credit toward meeting the twenty percent requirement.
- b) *Good Faith Effort* – In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c) *Incentives* – Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
- d) *Banking* – City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by City prior to the submittal or bid date.
- e) *The Exit Report and Affidavit (ERA)* – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator's Office of Contract Compliance & Employment Services along with a copy of the final progress payment application.

- f) *Joint Venture and Mentor Protégé Agreements.* If a prime contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
 - g) All affirmative action efforts of FOPR are subject to tracking by City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by a contractor to hire and/or contract with the individual or entity in question.
 - (i) In the recruitment of subcontractors, City requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Administrator will track the City’s MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
 - (ii) In the use of such recruitment, hiring and retention of employees or subcontractors, City requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland’s business community.
- 17.) LIVING WAGE ORDINANCE. If the amount of this Agreement is equal to or greater than \$25,000 annually, then FOPR must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (Contractors) of the City and employees of CFARs (Ord. 12050 § 1, 1998). FOPR must provide the following to its employees who perform services under or related to this Agreement:
- a) Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$10.83 with health benefits or \$12.45 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding

December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, Contractor shall pay adjusted wage rates.**

- b) Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. FOPR shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c) Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d) Federal Earned Income Credit (EIC) –FOPR shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- e) FOPR shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f) FOPR shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g) Reporting –FOPR shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. FOPR shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the

list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

- h) FOPR shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. FOPR shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

- 18.) EQUAL BENEFITS ORDINANCE. This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors (consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by City; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by City or (2) of real property owned by others for City's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by City or if City has a right to occupy the property, and if the contract's presence at that location is connected to a contract with City; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor.

- 19.) CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS. This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with City from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

- 20.) NUCLEAR FREE ZONE DISCLOSURE. FOPR represents that it is in compliance with City's restrictions on doing business with service providers considered nuclear weapons makers
- 21.) POLITICAL AND RELIGIOUS PROHIBITIONS. Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement cannot be used to fund/partially fund any political or religious activities, or to fund/partially fund an activity/project with a political or religious purpose. Such activities include, but are not limited to: sponsoring or conducting candidate's meetings, engaging in voter registration activity, publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government, religious worship, instruction, or proselytization of religious tenets.
- 22.) TERMINATION ON NOTICE. CITY may terminate this Agreement immediately for cause or without cause upon giving thirty (30) calendar days' written notice to FOPR. Termination shall be effective thirty (30) days after FOPR's receipt of CITY's termination notice.
- 23.) SUCCESSORS AND ASSIGNS. This Agreement shall be and is hereby binding on the successors and assigns of the parties hereto.
- 24.) WAIVER. A waiver by either party of any breach by the other party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this Agreement.
- 25.) RECORDS. FOPR shall cooperate with CITY to provide public access for the purposes of public inspection of information, documents, correspondence, inspection records, logs, minutes, photographs, contracts and other documents in any way related to the expenditure of funds granted or otherwise provided to FOPR by CITY.
- 26.) ACCOUNTING. FOPR shall maintain a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement and shall (a) permit CITY to access those records for the purpose of an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain those records for a period of four years subsequent to the last fiscal year during which CITY paid an invoice to FOPR under this Agreement.
- 27.) NOTICE. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to CITY by FOPR or FOPR by CITY shall be in writing and shall be deemed duly served and given when deposited in the United States mail, first-class postage prepaid, addressed as follows:

CITY

FRIENDS OF OAKLAND PARKS &
RECREATION

City of Oakland

Friends of OPR

Office of Parks and Recreation (OPR)

P.O. Box 13267

250 Frank Ogawa Plaza, Suite 3330

Oakland, CA 94661

Oakland, CA 94612

Attn: Executive Director

Attn: Director of OPR

- 28.) MODIFICATION. This Agreement may be modified, or amended only in a writing that specifically identifies the Agreement modifications or amendments and is signed by each of the parties.
- 29.) HEADINGS/CAPTIONS. All headings/captions in this Agreement shall have no legal meaning; they are simply to aid in reading the Agreement.
- 30.) ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof; and supersedes all prior oral and written, and all contemporaneous oral negotiations, understandings and agreements.
- 31.) SEVERABILITY/PARTIAL INVALIDITY. In the event that any covenant, term or condition herein contained is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other valid covenant, term or condition herein contained.
- 32.) GOVERNING LAW. This Agreement is made and shall be construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the City Administrator of the CITY OF OAKLAND has executed this Agreement representing the City of Oakland. Friends of Oakland Parks and Recreation has executed this Agreement, all in quadruplicate, the day and year first above written. The City Administrator is duly authorized by Resolution No. C.M.S. _____ passed by the City Council on _____ 2009, to execute this agreement.

CITY OF OAKLAND,

FRIENDS OF OAKLAND PARKS AND RECREATION

a municipal corporation

a nonprofit California charitable corporation

By: _____

By: _____

Date

Date

Title: City Administrator

Title: Executive Director

OFFICE OF PARKS AND RECREATION

APPROVED:

By: _____

By: _____

Date

Date

DIRECTOR

AS TO FORM AND LEGALITY

OFFICE OF THE CITY ATTORNEY



EXHIBIT A

Friends of Oakland Parks and Recreation Agreement

INSURANCE REQUIREMENTS (For Professional Services & Procurement Contracts)

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

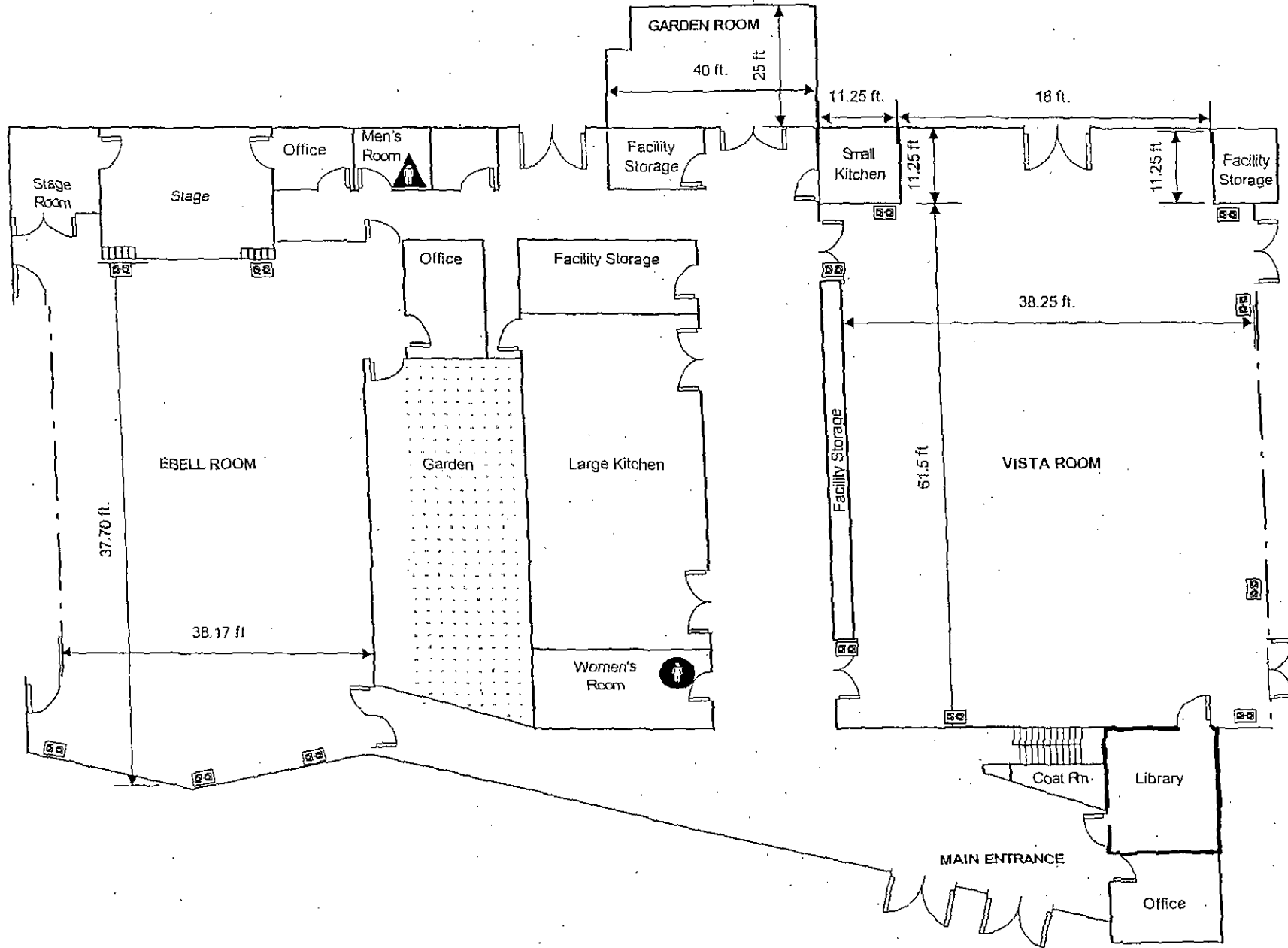
- i. Commercial General Liability insurance, shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)]. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.
 - A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location [project].
 - C. If the policy is a "claim made" type policy, the following should be included as endorsements:
 - 1) The retroactive date shall be the effective date of this Agreement or a prior date.
 - 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.
- ii. Automobile Liability Insurance. Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the Contractor does not own vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable with a signed statement from Contractor stating that only non-owned and hired vehicles are used in the course of the contract.

EXHIBIT B

Friends of Oakland Parks and Recreation Agreement

DETAILED FACILITY OVERVIEW: GARDEN CENTER

inside Lakeside Park, 666 Bellevue Ave, Oakland, CA 94610



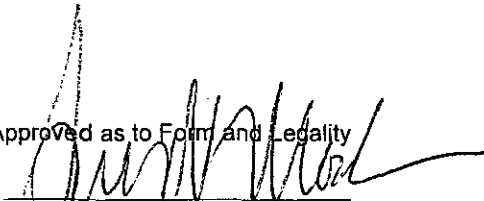
LEGEND

- Windows
- Power Outlet
- Staircase

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 JUL -2 PM 7:13

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO
1) EXECUTE AN AGREEMENT FOR THE COOPERATIVE
SOLICITATION OF PRIVATE AND PUBLIC FUNDING TO BE USED
FOR CAPITAL IMPROVEMENTS FOR OFFICE OF PARKS AND
RECREATION PROJECTS, PROGRAMS AND SERVICES
THROUGHOUT THE CITY OF OAKLAND, AND FOR THE
IMPROVEMENT OF CITY OWNED PARK GROUNDS AND
FACILITIES, BETWEEN THE CITY OF OAKLAND AND FRIENDS
OF OAKLAND PARKS AND RECREATION, FOR A THREE YEAR
TERM, WITH TWO CONSECUTIVE THREE YEAR OPTIONS TO
RENEW, AND TO PROVIDE FRIENDS OF OAKLAND PARKS AND
RECREATION NON-EXCLUSIVE USE OF THE LAKESIDE PARK
MARSHA J. CORPREW MEMORIAL GARDEN CENTER LOCATED
AT 666 BELLEVUE AVENUE; AND 2) TO WAIVE THE
COMPETITIVE BIDDING PROCESS FOR THIS AGREEMENT

WHEREAS, Friends of Oakland Parks and Recreations (FOPR) is a 501(c)(3), City of Oakland L/SLBE certified not-for-profit corporation, dedicated to improving parks and recreational opportunities in Oakland and improving the quality of life for all Oakland residents and others who utilize these facilities; and

WHEREAS, FOPR is dedicated to working cooperatively with the City of Oakland and its agencies to create sustainable public/private partnerships, including but not limited to, the Office of Parks and Recreation (OPR), the Public Works Agency (PWA), and the Community and Economic Development Agency (CEDA); as well as non-city organizations; and

WHEREAS, FOPR is committed to working cooperatively with private entities, endowments, foundations, various public agencies and other such entities to foster public/private partnerships essential to realizing the vision of Oakland as a model city and ensuring accessibility to parks and recreational opportunities for all; and

WHEREAS, FOPR has a proven track record of actively soliciting funds for parks and recreation capital improvement projects within the City from public and private sources; and

WHEREAS, FOPR has access to private funding sources and other entities to which the City may not have access; and

WHEREAS, it is beneficial for the City and FOPR to work collaboratively and in their respective areas of expertise to improve and enhance Oakland's parks and recreation facilities and recreational programs throughout Oakland; and

WHEREAS, FOPR shall seek funds from the private, public, and other sources for projects that are consistent with the City's adopted policies and priorities for capital improvement, including Council Resolution No. 78747 C.M.S. (Prioritization Criteria Policy) and Resolution No. 80510 C.M.S. (Maintenance Considerations for Park Projects funded by the Landscape, Lighting and Assessment District); and

WHEREAS, FOPR shall obtain written approval of the concept plan for new projects from OPR, CEDA, PWA, Parks Maintenance Division and the Office of the City Administrator's ADA Programs Division before seeking private funding for such projects; and

WHEREAS, FOPR will provide OPR with monthly reports on FOPR's funding solicitation efforts on behalf of the City and provide OPR with an annual report, which shall be included with OPR's annual report to the Oakland City Council, setting forth all contracts and funds received for the prior year; and

WHEREAS, the City agrees that on projects for which FOPR has raised private funding or had a part in securing State or Federal funding, on City approved applications, City agrees to pay FOPR a fee from grant funds received, as defined in the Agreement, for City approved work performed by FOPR in either the writing of the grant or for work performed after grant funds are received; and

WHEREAS, the City and FOPR, in this Agreement, wish to document their long standing relationship, which supports and funds park improvement projects and the services and activities of OPR, so that FOPR may continue to act as a fiscal sponsor for the benefit of the City and to receive and expend grant funds and donations for OPR's programs, facilities, and services; now, therefore, be it

RESOLVED: The City Administrator or his/her designee is authorized to execute this Agreement, on behalf of the City of Oakland; and be it

FURTHER RESOLVED: That the competitive bidding process for this Agreement is hereby waived; and be it

FURTHER RESOLVED: That the Office of the City Attorney has approved this resolution as to form and legality, and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California