

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

04 JUN 10 PM 2:07

TO: Chairperson Nancy Nadel and Members of the Public Works Committee
FROM: Office of the City Attorney
DATE: June 22, 2004

RE: **RESOLUTION AUTHORIZING AN AMENDMENT TO THE AGREEMENT BETWEEN CHILDREN'S FAIRYLAND, INC. ("NON-PROFIT") AND THE CITY OF OAKLAND TO DESIGNATE THE NON-PROFIT AS CITY'S REPRESENTATIVE FOR THE PURPOSE OF DESIGN AND CONSTRUCTION OF IMPROVEMENTS**

SUMMARY

The City and Children's Fairyland, Inc. ("Non-profit") are currently parties to an Agreement for the maintenance and operation of Children's Fairyland which expires on July 6, 2004. The City and the Non-Profit are currently negotiating terms for a new 15 year agreement. In the interim, the Non-profit is moving forward with Measure DD funded design and construction improvements at the facility. In order for the construction to proceed, an amendment to the current Agreement is required to designate the Non-profit as the City's representative until December 31, 2004 for purposes of complying with applicable state licensing laws and to provide the City with indemnification. A holdover provision in the current Agreement allows the Non-profit to continue operating the facility.

FISCAL IMPACTS

None.

BACKGROUND

The existing Agreement with the Non-profit requires that any amendment or modification of the Agreement be approved by the City Council.

KEY ISSUES AND IMPACTS

In order to proceed with DD funded construction of improvements, the Non-profit should be designated a representative of the City. This amendment to the current Agreement allows the Non-profit to proceed with DD funded construction without delay and provides the City with indemnification.

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SUSTAINABLE OPPORTUNITIES

None.

DISABILITY AND SENIOR CITIZEN ACCESS

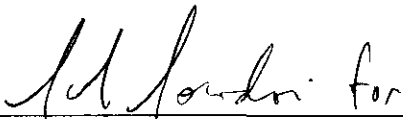
None.

RECOMMENDATIONS AND RATIONALE

The attached Resolution includes staff's recommendations based on an understanding reached with the City Administrator and representatives of the Non-profit on June 9, 2004.

Staff recommends that the City Council approve an amendment to the current Agreement between the City and the Non-profit, until December 31, 2004, to designate the Non-profit as a representative of the City for the sole purpose of DD funded design and construction of improvements to the facility.

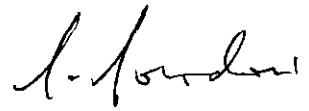
Respectfully submitted,



JOHN RUSSO
City Attorney

Prepared by:
Margaret Fujioka
Senior Deputy City Attorney

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

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RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING AN AMENDMENT TO THE AGREEMENT BETWEEN CHILDREN'S FAIRYLAND, INC. ("NON-PROFIT") AND THE CITY OF OAKLAND TO DESIGNATE THE NON-PROFIT AS CITY'S REPRESENTATIVE FOR THE PURPOSE OF DESIGN AND CONSTRUCTION OF IMPROVEMENTS

WHEREAS, the City and Non-Profit are currently parties to an Agreement for the maintenance and operation of the facility that will expire July 6, 2004; and

WHEREAS, the City is currently in negotiations with the Non-Profit to execute a 15-year Agreement for the continued operation and management of the facility; and

WHEREAS, the Non-Profit desires to proceed with Measure DD funded design and construction of improvements at the facility; and

WHEREAS, in order for the Non-Profit to timely complete the improvements, an amendment to the current Agreement is required to designate the Non-Profit as the City's representative for purposes of complying with applicable state licensing laws; now therefore be it

RESOLVED: That the City Council authorizes an amendment to the existing Agreement between the City and the Non-Profit to designate, until December 31, 2004, the Non-Profit as a representative of the City for the sole purpose of Measure DD funded design and construction of improvements to the facility.

FURTHER RESOLVED: That the City Council authorizes an amendment to the existing Agreement between the City and the Non-Profit to specify that, the Non-Profit 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 Non-Profit, 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 sole negligence or willful misconduct of City, its Council Members, officers, agents and employees.

FURTHER RESOLVED: That a copy of this resolution has been approved by the Office of the City Attorney and a copy will be on file at the Office of the City Clerk.

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IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, WAN, CHANG, QUAN, BROOKS, REID, CHANG, AND PRESIDENT
DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of **kland, California

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JUN 22 2004