

CITY OF OAKLAND



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Office of the City Manager
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December 14, 2004

Life Enrichment Committee
Oakland, CA

RE: RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF OAKLAND AND OAKLAND CHILDREN'S FAIRYLAND, INC., FOR THE OPERATION AND MANAGEMENT OF CHILDREN'S FAIRYLAND, FOR A FIFTEEN-YEAR TERM EXPIRING ON DECEMBER 31, 2019, UNDER WHICH THE CITY WILL PAY AN ANNUAL AMOUNT NOT TO EXCEED \$83,000 AND UTILITY AND INSURANCE PREMIUM COSTS (PROJECTED TO BE AN ANNUAL AVERAGE OF \$68,000 IN UTILITIES AND AN ANNUAL AVERAGE OF \$95,000 FOR INSURANCE PREMIUM COSTS) FOR AN ESTIMATED ANNUAL TOTAL OF \$246,000

Dear Chairperson Chang and Committee Members:

SUMMARY

The ten-year agreement between the City of Oakland and Children's Fairyland, Inc. (CFL) a nonprofit corporation, for operation, management, improvement and maintenance of the City-owned Children's Fairyland USA (Park) at 699 Bellevue Avenue, Oakland, CA, expired July 6, 2004 and is currently in *holdover* status pending approval of a new management agreement. Council Resolution No. 78658 C.M.S., passed on July 6, 2004, authorized amendment of the agreement to designate CFL as City's representative for the sole purpose of designing and constructing Measure DD-funded improvements to the Park facility. The authorized amendment terminates December 31, 2004, unless extended by the City Administrator.

Staff has negotiated with the CFL and developed a proposed new agreement for the management of the Park for a fifteen-year term, expiring December 31, 2019. The fifteen-year term of the agreement enables CFL to continue offering program services to children, youth and their families, as well as other members of the Oakland public and visitors; implement new or enhanced exhibits and facilities set forth in the Fairyland Conceptual Master Plan as approved by the City Council and funded by revenue from general obligation

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bonds, such as Oakland Measure DD (Oakland Trust for Clean Water and Safe Parks) adopted in November 2002 by Oakland voters. Such improvements include, but are not limited to, the following projects currently identified and described in the Measure DD Master Plan: a) renovation and expansion of the Puppet Theater, b) renovation of the park entry/access, c) renovation of sets, d) construction of a new pavilion, and e) construction of improvements to drainage and utility systems.

The City would benefit from the resulting programs, services and real property improvements.

Staff recommends Council approval of a resolution authorizing the City Administrator to enter into a fifteen-year agreement with the Oakland Children's Fairyland, Inc., for the operation and management of Children's Fairyland, in an annual amount not to exceed \$83,000 and a projected annual average amount of \$163,000 in utilities and insurance premium costs, for an estimated annual total of \$246,000.

FISCAL IMPACT

Approval of the Children's Fairyland management agreement will authorize annual subsidy payments to CFL of \$83,000 (\$1,245,000 for the duration of the fifteen-year agreement). Assuming 5 percent annual increases, the City will also provide an average of \$68,000 per year (total \$1,020,000 for the fifteen-year agreement) for Park utilities such as electricity and water and garbage removal; and payment of Commercial General Liability/Property Loss premiums of \$84,000 in Policy Year 1 (current through December 4, 2005) and an average of \$95,000 per year thereafter (total \$1,414,000). The estimated annual total is \$246,000 (\$83,000 subsidy, \$68,000 utilities and \$95,000 insurance), approximately \$3.7 million for the duration of the 15-year agreement.

Funds for the first year are available from the City's General Purpose Fund 1010, City Facilities Fund 4400 and/or the Landscaping and Lighting Assessment Fund (LLAD) Fund 2310 in the Agencies/Departmental FY 2004-05 budgets as detailed below.

Office of Parks and Recreation: \$83,000 Annual Subsidy Fee (General Purpose Fund 1010, Organization 503230, Account 53719, NB02).

Public Works Agency: Electricity (City Facilities Fund 4400 & LLAD Fund 2310, Organization 30634, Account 53112); and Water & Garbage (LLAD Fund 2310, Organization 30651, Account 53114 & 53115).

Risk Management Division: Insurance premiums (General Purpose Fund 1010, Organization 90311, Account 53411).

Funds for agreement fiscal years 2 through 15 will be included as part the Agency / Department's future operating budgets.

BACKGROUND

Children's Fairyland was created in 1950 as the first three-dimensional storybook theme park for children in the United States. The 10-acre facility provides landscaped gardens, thirty colorful fairytale sets, talking storybooks, small-sized amusement rides, farm animals, puppet theatre, picnic areas and concessions. Designed for children ages 0 to 8, Children's Fairyland has entertained and educated many generations of children through the talking storybooks and fairytale sets, theatrical performances, children-size amusement rides, farm animals, and other programming.

The City operated the Park until 1994, when the CFL nonprofit corporation was established to operate and manage the facility. The City entered into an agreement with CFL for management of the Park operations in July 1994 for a ten-year period. The agreement expired July 6, 2004 and the holdover provision was exercised to allow the City and CFL to develop a new agreement. The 1994-2004 agreement provides an option to extend the agreement for one three-year additional period. The CFL requested a new longer term agreement in order to make the desired improvements to the facility, continue programming and operations and facilitate fundraising.

In the 10 years CFL has managed the Park, it completed a Conceptual Master Plan (April 2003) that sets forth a vision and plan for Fairyland to provide a safe, family-centered environment that stimulates children's imagination, creativity and desire to learn. The CFL has fulfilled its obligations to the City by providing a variety of public services, continuing to enhance the park facility by implementing improvements set forth in the approved Master Plan, and introducing new and fun program attractions.

The Park has been recognized as a "best attraction" or "best amusement park" over the years by the Oakland Tribune, San Francisco Chronicle, Bay Area Parent, SF Focus Magazine, East Bay Express and Diablo Magazine, and receives positive news and television coverage by Bay Area Backroads, Evening Magazine, Spanish-language stations and others.

Children's Fairyland has over 130,000 visitors annually, of which CFL estimates 44% to be Oakland residents. CFL programming is leveraged through partnerships in the areas of children's education, literacy and health. CFL reports, for example, that Alameda County's *Every Child Counts* grant funds enable CFL to work with 62 providers for low-income families in Oakland resulting in 1,237 no-cost field trip admissions and 2,574 tickets provided to low-income families (and providers) in Oakland this year. The on-going partnership with *Oakland Ready to Learn* helps to focus CFL outreach efforts. Even Start and Head Start programs, Family Support Services, Harriet Tubman, East Bay Agency for Children's Therapeutic Nursery School, Webster Child Development Center (CDC), Yuk Yan CDC, YMCA, and other federal, civic and city institutions bring children to the Park. The group admission discount encourages use by government and school programs.

CFL provides seasonal employment to between twenty and thirty high school youth annually, primarily drawn from Oakland high schools. The youth also learn proper workplace behavior, customer service and responsibility.

The proposed fifteen (15) year agreement would continue CFL's successful management of the Park.

KEY ISSUES AND IMPACTS

Key provisions of the proposed management agreement are summarized below. (Draft agreement is attached.) Provisions that are new or differ from the current agreement are stated in *italics*. CFL takes issue with payment of approximately \$20,000 in insurance premium costs, discussed in #4 below, and is concerned about the potential cost impact to the organization (a copy of the CFL Proposed Budget for the year ending June 30, 2005 is attached for reference).

1. CFL will be solely responsible for management, *maintenance*, and improvement of the Park. Management includes such services as marketing, advertising, promotions, scheduling of events and increasing use of the Park; administering daily operations; charging fees for Park use; and providing services to users.

The 1994 agreement provided that the City be responsible for regular, routine building maintenance, utilities expenses and the provision of maintenance to Fairyland grounds, though CFL could assume any portion of the maintenance responsibility at any time, with City approval. Over the 10-year period of the 1994 agreement, CFL gradually assumed virtually all of the maintenance responsibilities in exchange for City payment of a cash subsidy of \$63,000, which Council later increased to the current subsidy amount of \$83,000. The City, however, continued to pay for electrical utility, water utility and garbage removal costs.

The proposed management agreement provides that *CFL will be responsible for all maintenance and the City will not be responsible for any maintenance*. Maintenance covers *grounds, buildings, rides, equipment, animals, and security*, as well as their administration and staffing. CFL will be responsible for paying all licenses, fees, and possessory interest taxes, if applicable, and adhering to all regulations related to care, feeding and importing animals. *CFL will be responsible for obtaining amusement ride inspections and certification from the State, as well as City inspection of stored hazardous materials such as paints for amusement park sets.*

2. CFL will raise funds and also use funds accumulated from the Park operations for the maintenance, operation and improvement of the Park. CFL will have the right to collect and use revenue from the Park; sub-license concession areas; charge admission fees; collect rental fees; and raise funds. Proposed changes to fees and charges must

be reasonable and submitted for City Council approval of the Master Fee Schedule through the Office of Parks and Recreation (OPR). The statement "These fees are included for information only; they are charged directly by service providers and not by the City of Oakland" will continue to be printed with the Park fees in the Master Fee Schedule.

3. CFL will apply funds from bond measures for parks and recreational facilities (e.g., Measures DD) to implement the Council approved Conceptual Master Plan and construct improvement projects. Each year, CFL will provide OPR with a capital improvement program budget, spending plan, actual expenses and schedule for projected development for the current and two following budget years.
4. The City subsidies are a combination of cash support for operations and management, payment of general liability insurance and property insurance premiums, electricity and water utility and garbage removal costs, and the performance of tree trimming services. The City cash subsidy of \$83,000 is 5.7% of CFL's \$1,459,793 total revenue and support (based on the CFL proposed budget for the fiscal year ending June 30, 2005).

CFL is concerned that it must be able to ensure sufficient operating and maintenance funds for the Park. The agreement allows *the CFL to request through the City's biannual budget process, that Council consider an increase in City subsidy for the operation and management of the Park during the term of the agreement.*

City will continue to subsidize payment of the Commercial General Liability premium (currently \$65,000) and Property Loss Insurance premium (currently \$19,000). The new agreement provides that CFL assume some of the risk, by requiring *CFL to pay all deductibles and uninsured losses incurred during operation of the facility, and assume 30% of the premium costs for Commercial General Liability beginning with the December 5, 2005 policy period and continuing through the duration of the Agreement.* Of the \$65,000 General Liability policy premium per year—the City's 70% share would be \$45,500 and CFL's 30% would be \$19,500. Shared responsibility for the premium expense reflects the desire and commitment of CITY and CFL to control losses in Park operations.

Water and electrical utility and garbage removal expenses will continue to be paid by the City in acknowledgement of added operational costs to CFL in complying with new City requirements such as Living Wage.

City continues to provide tree trimming service, on an as needed basis.

5. *The agreement may be terminated by CFL or the City at any time without cause and without penalty upon 180 days (6 months) prior written notice. Upon termination of*

the agreement, all assets and property will become the City's. The City will assume all financial and operational responsibilities for the Park, except CFL's debts and liabilities, which shall be CFL's sole responsibility.

6. The CFL is required to meet City financial, auditing, insurance, and records access and retention requirements, including the requirements set forth in the Council approved "Table of Contract Clauses Related to Financial Responsibilities," and any updates and modifications.
7. The CFL is required to indemnify and hold the City harmless for any claims or damages arising out of the performance of this Agreement by CFL, its contractors, subcontractors, vendors, guests, and invitees, except for any claims or damages resulting from the sole negligence or willful misconduct of the City.
8. The Board of Directors of 9 members *will be selected by CFL from a broad cross-section of people in the Bay Area that reflects the cultural diversity of the Oakland community /East Bay area.* Under the existing-holdover agreement, the Mayor appoints members of the Board of the Directors, comprised of 5 members from the Parks and Recreation Advisory Commission and 4 members from the Lake Merritt Breakfast Club. Instead of Mayoral appointments to the Board, CFL requested the authority to appoint its own Board members to enhance fundraising capacity and garner specific expertise for response to Children's Fairyland's intermediate and long-term needs.
9. The CFL will follow non-discrimination and equal employment practices in carrying out the operations, maintenance and improvements, and in determining the appropriate fees and charges.
10. With this new agreement, CFL becomes subject to City policy requirements adopted since 1994. CFL will comply with *the Living Wage Ordinance, Local, Small Business Enterprise Program, Local Employment Program and 15% Apprenticeship Program, Equal Benefits Ordinance, Campaign Contribution Limits, Nuclear Free Zone Disclosure, Political Prohibition, and Sunshine Ordinance provisions.*

SUSTAINABLE OPPORTUNITIES

CFL will carry out its responsibilities under this agreement making efforts to maximize small local business participation, pursue energy and environmental conservation opportunities, and to keep the Park accessible to all income levels for social equity.

DISABILITY AND SENIOR CITIZEN ACCESS

The agreement provides for open access and requires that the Park facilities be made available

and public program (s) conducted without discrimination as to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, AIDS, ARC or disability. Improvements to facilities will comply with the Americans with Disabilities Act.

RECOMMENDATIONS AND RATIONALE

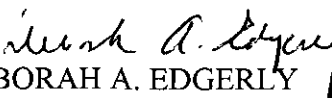
The Oakland Children's Fairyland, Inc., has satisfactorily performed its obligations and responsibilities of the current management agreement. Children's Fairyland continues to be a destination of choice for children and their parents for unique entertainment, recreational, and educational experiences. Under CFL leadership, many physical improvements have been made to renovate and restore structures and develop attractions using local bond funds. CFL has built partnerships with many local nonprofits and governmental entities to leverage operating funds and improve access to the Park.

The proposed agreement will enable the CFL to continue the sound management of the well-loved Children's Fairyland and continue moving forward in its efforts to complete Measure DD funded improvements for the public's enjoyment.

ACTION REQUESTED OF COUNCIL

We recommend that the City Council approve the resolution authorizing the City Administrator to enter into an agreement with Oakland Children's Fairyland, Inc., for the management and operation of the Park, for a 15-year term expiring December 31, 2019, under which the City will pay an annual amount not to exceed \$83,000 and utility and insurance premium costs (projected to be an annual average of \$68,000 in utilities and an annual average of \$95,000 for insurance premium costs) for an estimated annual total of \$246,000.

Respectfully submitted,


DEBORAH A. EDGERLY
City Administrator

OAKLAND CHILDREN'S FAIRYLAND, INC.
STATEMENT OF PROPOSED BUDGET
FYE 6/30/05

	<i>Proposed Budget 2004-2005</i>	<i>Actual FYE 6/04</i>	<i>Variance</i>	<i>Comments</i>	<i>Actual FYE 6/03</i>	<i>Variance</i>
REVENUE AND SUPPORT						
Admissions	618,582	597,129	21,453		573,078	45,504
Magic Keys	37,808	34,804	3,004		31,762	6,046
Toy Shop	145,180	129,572	15,608	Increased to break even	123,940	21,240
Café	166,321	147,051	19,270	Increased to break even	120,676	45,645
Birthday Parties	56,140	56,140	0		50,481	5,659
Summer Camp	53,930	53,930	0		46,825	7,105
Overnighters	12,175	12,175	0		8,891	3,284
Jack O'Lantern Jamboree	27,000	23,908	3,092		20,515	6,485
Jamboree Sponsorship	5,000	1,900	3,100		0	5,000
Every Child Counts	73,117	47,165	25,952		0	73,117
Events/Park Rental/Personalities	7,038	10,511	(3,473)		4,621	2,417
Gala Celebration	75,000	70,389	4,611		51,718	23,282
Unrestricted Contributions	59,655	57,596	2,059		53,869	5,786
Designated Contributions	28,000	25,000	3,000	Glen Voyles/Garden Grant	0	28,000
Restricted Contributions	0	60,134	(60,134)		61,802	(61,802)
Development Grant	6,500	26,020	(19,520)			
Maintenance Income from City	83,000	83,000	0		63,100	19,900
Other Income	5,347	7,189	(1,842)		6,602	(1,255)
Total Revenue and Support	1,459,793	1,443,613	16,180		1,217,880	241,913
EXPENSES						
Park Operations	594,809	525,468	69,341	*Salary Increases/Living Wage Adj	536,183	58,626
Maintenance Expense	177,361	122,767	54,594	*Salary Increases/Living Wage Adj	141,652	35,709
Magic Keys	22,757	20,189	2,568		15,881	6,876
Toy Shop	141,146	145,421	(4,275)		127,515	13,631
Café	157,998	151,318	6,680		145,734	12,264
Program Expense	266,832	256,761	10,072	*Salary Increases/Living Wage Adj	214,641	52,191
Gala Expense	10,000	11,187	(1,187)		12,299	(2,299)
Fundraising Expense	2,050	5,822	(3,772)		0	2,050
Jamboree Expense	8,000	10,657	(2,657)		0	8,000
Every Child Counts	41,363	20,258	21,105		0	41,363
Designated Expenses	28,000	31,001	(3,001)	Glen Voyles/Garden Grant		
Restricted Expenses	0	60,134	(60,134)		0	0
Total Expenses	1,450,316	1,360,983	89,333		1,193,905	256,411
Net Income	9,477	82,630	(73,153)		23,975	(14,498)

Assumptions:

Assumptions:

Café Income Increased to Break Even

Toy Shop Income Increased to Break Even

Café Expense is 34% of Income

Toy Shop Expense is 43% of Income

Board Approved Tunnel Included in Restoration Expense

Salaried Employees Receive Increases

Cost of Living Wage Applied to Hourly Employees Beginning in November

Theatre Assistant Frees Up Karen for Additional Development Work

OAKLAND CITY COUNCIL


City Attorney

RESOLUTION No. _____ C.M.S.

**RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN
THE CITY OF OAKLAND AND OAKLAND CHILDREN’S FAIRYLAND, INC.,
FOR THE OPERATION AND MANAGEMENT OF CHILDREN’S FAIRYLAND,
FOR A FIFTEEN-YEAR TERM EXPIRING ON DECEMBER 31, 2019,
UNDER WHICH THE CITY WILL PAY AN ANNUAL AMOUNT NOT TO EXCEED
\$83,000 AND UTILITY AND INSURANCE PREMIUM COSTS
(PROJECTED TO BE AN ANNUAL AVERAGE OF \$68,000 IN UTILITIES AND AN
ANNUAL AVERAGE OF \$95,000 FOR INSURANCE PREMIUM COSTS) FOR AN
ESTIMATED ANNUAL TOTAL OF \$246,000**

WHEREAS, the City of Oakland (“City”) and the Oakland Children’s Fairyland, Inc., a non-profit corporation (CFL), seek to enter into an Agreement for the purpose of operating, managing, maintaining and improving Children’s Fairyland for the use and benefit of the public; and

WHEREAS, Children’s Fairyland, which real property and improvements are owned by the City of Oakland, is located at 699 Bellevue Avenue, Oakland, California (herein referred to as “Park”); and

WHEREAS, the Park is an historic and unique asset for the recreation, education and enjoyment of Oakland’s children, students, residents and visitors through its landscaped gardens, colorful storybook and fairytale sets, small rides, farm animals, puppet theatre, picnic areas and other programming; and

WHEREAS, the City wishes to promote and assist in improving the Park as an educational and recreational area; and

WHEREAS, the CFL, which has successfully managed and operated the Park since 1994 under a ten-year agreement with the City, agrees to be solely responsible for the maintenance, operation and improvement of said property; and

WHEREAS, CFL needs City Council approval for the right and authority to collect and use revenues collected at the Park, including sub-licensed concession charges, admission changes, rental fees, and raising of funds in any other lawful manner for the maintenance, operation and improvement of the Park; and

WHEREAS, CFL will submit proposed changes to Park fees and charges to the City Council for approval in the Master Fee Schedule; now therefore be it

RESOLVED: That the City Administrator of the City of Oakland is hereby authorized and directed to negotiate and execute an Agreement with CFL for a fifteen-year term expiring on December 31, 2019; and be it

FURTHER RESOLVED: That the City will pay an annual subsidy to CFL in an amount not to exceed eighty-three thousand dollars (\$83,000); and be it

FURTHER RESOLVED: That the City will also provide, assuming 5 percent annual increases, an average of sixty-eight thousand dollars (\$68,000) per year for electricity, water, and garbage removal, and pay Commercial General Liability/Property Loss premiums of eighty-four thousand dollars (\$84,000) in Policy Year 1 (current through December 4, 2005) and an average of ninety-five thousand dollars (\$95,000) per year thereafter; and be it

FURTHER RESOLVED: That funds in FY 2004-05 are available from the City’s General Purpose Fund 1010, City Facilities Fund 4400 and/or the Landscaping and Lighting Assessment Fund (LLAD) Fund 2310 in the FY 2004-05 budgets of the following agencies and departments: Office of Parks and Recreation: \$83,000 Annual Subsidy Fee (General Purpose Fund 1010, Organization 503230, Account 53719, NB02); Public Works Agency: Electricity (City Facilities Fund 4400 & LLAD Fund 2310, Organization 30634, Account 53112); and Water & Garbage (LLAD Fund 2310, Organization 30651, Account 53114 & 53115); Risk Management Division: Insurance premiums (General Purpose Fund 1010, Organization 90311, Account 53411); and funds for Agreement fiscal years 2 through 15 will be included as part of the Agency / Department’s future operating budgets; and be it

FURTHER RESOLVED: That the City Council authorize an agreement between the City of Oakland and Oakland Children’s Fairyland, Inc., for the operation, management, maintenance and improvement of Children’s Fairyland, for a fifteen-year term expiring on December 31, 2019, under which the City will pay an annual amount not to exceed \$83,000 and utilities and insurance premium costs (projected to be an annual average of \$68,000 in utilities and an annual average of \$95,000 for insurance premium costs), for an estimated annual total of \$246,000; and be it

FURTHER RESOLVED: That the Office of the City Attorney shall review and approve the Agreement authorized by this Resolution prior to the City Administrator’s execution of same; and a copy of the Agreement will be on file at the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to take whatever action is necessary with respect to the Oakland Children’s Fairyland, Inc., Agreement for Park operations in accordance with the basic purpose of this Resolution.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

11/18/04 Rev.

AGREEMENT

between

CHILDREN'S FAIRYLAND INC., and CITY OF OAKLAND

THIS AGREEMENT is made and entered into this _____ day of _____, 200_, between the CITY OF OAKLAND, a municipal corporation, hereinafter referred to as "CITY" and OAKLAND CHILDREN'S FAIRYLAND INC., a California nonprofit public interest corporation (hereinafter referred to as "CFL") for the operation and management of the CITY-owned PARK and children's attraction.

WITNESSETH

WHEREAS, the CITY is the fee owner of that certain real property known as "Children's Fairyland, USA", located at 699 Bellevue Avenue in the City of Oakland, California, and which is described in Exhibit A, attached and incorporated herein by references (hereinafter referred to as "PARK"); and

WHEREAS, the PARK is a unique and important asset for the education, enjoyment and recreation of the CITY'S children, students, residents and visitors; and

WHEREAS, the CITY desires to promote and aid in said property's maintenance and improvement as an educational, historical, cultural and public theme park for young children of the CITY, among others; and

WHEREAS, CFL was formed and organized for the purpose of operating, preserving, restoring, developing and improving the PARK for the use and benefit of the public; and

WHEREAS, CFL desires to maintain, operate and improve said real property consistent with the CITY'S desires; and

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

IN CONSIDERATION OF THE ABOVE RECITALS AND PERFORMANCE OF THE RESPECTIVE COVENANTS HEREINAFTER DESCRIBED, the CITY and CFL hereby agree that CFL shall improve, maintain and operate the PARK, upon the following terms and conditions:

1. **FEE INTEREST:** The CITY shall retain the fee title to the above-referenced real property.

2. TERM: The Term of this Agreement shall be for fifteen (15) years commencing upon execution hereof and expiring on December 31, 2019.
3. DEFAULT BY CFL: In the event CFL defaults or fails to perform under any of the obligations hereunder, the CITY Administrator shall give written notice hereof to CFL expressly stating the nature of said default or nonperformance. CFL shall have sixty (60) days from receipt of said notice to correct said default or nonperformance, and in the event of CFL's failure to do so, the CITY, in addition to any other legal or equitable rights it may have, may do any or all of the following:
 - a. Terminate this Agreement upon written notice to CFL; or
 - b. Direct CFL to assign its interest in and to this Agreement to a party designated by the CITY Council without compensation to CFL; or
 - c. Perform itself whatever corrective measures are deemed necessary, which costs of such services plus administrative overhead shall be charged to and paid by CFL to the CITY upon demand.
4. TERMINATION: This Agreement may be terminated by CFL or the CITY at any time without cause and without penalty upon six (6) months' prior written notice. Upon termination of this Agreement, all assets and operations will be turned over to the CITY or its designated representative, and the CITY will assume all financial and operational responsibilities for the PARK, except CFL's debts and liabilities which CFL shall be solely responsible.
5. AGREEMENTS: CFL and CITY agree that this Agreement supersedes all previous Agreements with respect to CFL's operations in the PARK and confirms CFL's right to continue the operation of concessions including food, rides, stages, puppet theatre and programs, and further confirms CFL's responsibility for all obligations of such Agreements.
6. CFL OBLIGATIONS: The parties agree that excepting Paragraph 22, it is the intent of this Paragraph 6, and the subparts thereof, that the CFL shall be solely responsible for the management, maintenance and rehabilitation of PARK, in a safe condition, and shall comply with all applicable Federal (including ADA), State, County and City rules and regulations. City does not have responsibility for maintenance, management and rehabilitation of PARK.
 - a. Management: Management includes, but is not limited to, marketing, advertising and promoting PARK; increasing the use of PARK by Oakland residents, particularly children, and by providing access to visitors to Oakland; scheduling and promoting events, shows and exhibitions for PARK in accordance with the goals and objectives of CFL and the approved Master and Strategic

Plan; scheduling and administering the daily operation of PARK and providing services required by users of PARK; and setting, subject to prior CITY approval, and charging fees for use and services related to events held at PARK in accordance with Paragraph 10.

- b. Maintenance: Maintenance includes, but is not limited to, grounds, landscaping, buildings, rides, equipment, animals, and security, administration and staffing therefore. The CFL further agrees that it will be responsible for proper budget and financial reporting for those maintenance, management and rehabilitation responsibilities stated hereinabove; for all licenses, fees, possessory interest taxes, if applicable, and all regulations relative to the care, feeding, importing and exporting of animals. The CFL shall pay and be responsible for telephone service and public utilities not covered in Paragraph 22, to the premises during the term of this Agreement. CFL further agrees that all animals at the PARK shall be maintained in a manner consistent with comparable zoo standards and in accordance with applicable federal, State, county, or City rules and regulations.
 - c. Amusement Ride and Certification: CFL shall be solely responsible for conducting annual amusement ride inspections and obtaining certification from the State of California as required pursuant to Title 8 CCR 344.5 through 344.18. CFL shall provide CITY with annual inspection reports and certification.
 - d. Hazardous Materials Inspection: CFL shall be solely responsible for the inspection of stored hazardous materials, such as paints for the amusement park sets, through the services of the CITY Fire Department.
7. BOARD OF DIRECTORS: CFL's Board shall consist of nine (9) members, as chosen by the Board, and shall be selected from a broad cross section of the people of the Bay Area that reflects the cultural diversity within the Oakland Community/East Bay Area. An Executive Director for CFL shall be employed by the Board. The Executive Director shall be responsible for the efficient operation of the business of CFL, and shall exercise supervision of all employees, purchasing and actions of CFL, subject to the direction of the Board, and shall perform such other duties as may be prescribed by the Board from time to time. A copy of the Nonprofit Corporation's Articles of Incorporation and all currently approved Bylaws, and any Constitution and Amendments shall be submitted to the OPR within thirty (30) days of the date of execution of this Agreement. Any amendments to these documents shall be submitted to the OPR within thirty (30) days after the Board of Directors' approval.

8. **PROPERTY ACCOUNTING:** CFL has a responsibility for the protection, maintenance and preservation of all property held as a custodian for the CITY. At the inception of this Agreement, the parties shall inventory all tangible property of the CITY transferred to the custody of CFL. All tangible property acquired during the course of this Agreement shall be the property of the CITY when acquired by CITY grant, operating revenues, refunds, fund raising revenues, governmental grants and other grants. Annually, CFL shall provide an acquisition and disposal report for tangible property. Property dispositions shall be approved by the CITY Administrator or designee (OPR) prior to such disposition. At the conclusion of this Agreement, all CITY tangible property shall be returned to the CITY with shipping and delivery expenses to be at CFL's sole expense.
9. **RETURN OF FUNDS AT END OF TERM:** Upon termination of this Agreement, CFL shall close all accounts; all account balances shall be determined and certified by an independent Certified Public Accountant; and such balances shall be forwarded to the CITY within one-hundred-twenty (120) days after such termination.
10. **CHARGES AND FEES:**
 - a. Good, Services, Rides: CFL and/or its licensees may set and determine prices for services, goods and products sold to the public; provided, however, that said prices shall not be more than those charged for similar services, goods and products at comparable facilities.
 - b. Admission Fees: Admission fees shall not exceed those charged by other similar facilities.
 - c. Rental Fees: Rental fees for PARK facilities shall be pursuant to the City's Master Fee Schedule. CFL agrees to offset up to \$3,500 per year in rental fees for qualified non-profit organizations that desire to rent PARK under the Community Access Program. The Community Access Grant application is attached and incorporated herein by reference as Exhibit ().
 - d. Submittal of New or Revised Fees: CFL shall submit to OPR any proposed new or revised fees by January 1st of each year, to be considered by the City Council. If approved by the City Council, such new or revised fees will be effective July 1st as an amendment to the Master Fee Schedule.
11. **CFL SERVICES:**
 - a. On-Going Services: CFL shall provide on-going services consistent with park, amusement park and related concession industry

standards, Alameda County Health and any other federal, state or local standards or requirements.

- b. Programs and Entertainment: CFL will provide educational programs and entertainment at PARK for the benefit of the public.
- c. Concessionaires: CFL may enter into Agreements with Concessionaires for the sale of food and/or souvenirs, and for the operation of children's rides and/or animal exhibits. CFL may enter into Agreements with suppliers for goods, food, souvenirs, materials, supplies and services related to the operation of the PARK. Selection and award of contractors and suppliers shall follow the CITY'S established policies regarding awards of sub-contracts and/or selection of vendors. Improvements by a concessionaire shall be subject to prior approval by the City Administrator. In the event a concessionaire desires to retain ownership of improvements placed or constructed on the real property, they may be allowed to do so by the CFL so long as the CITY'S interest in the land upon which improvements are located is not subordinate thereto at any time; provided further, that, upon termination of the concession, at the CITY'S option, the premises shall be returned in as good a condition as existed prior to commencement of construction of the improvements. CFL shall provide the OPR with copies of all sub-concession agreements and audited financial statements annually.

12. **IMPROVEMENTS AND MAINTENANCE**: CFL shall implement the improvements as set forth in the Master Plan or any amendments thereto, as approved by the CITY Council and as related to the maintenance obligations described in Section 6 (b). CFL shall, during implementation of the improvements, adhere to sound business and legal practices concerning the following areas: design, construction, financing, supervision, building codes, regulations, maintenance, and all other applicable laws. CFL shall keep the premises free and clear from any and all liens, claims and demands for work performed, materials furnished or operations conducted on said premises.

Any improvements shall be subject to all applicable federal, state, and local permitting and development requirements including, but not limited to, the California Environmental Quality Act, Oakland Planning Code, Oakland General Plan (including the Open Space Conservation and Recreation Element [OSCAR]), and Oakland Municipal Code, (including the Creek Protection Ordinance and Grading Ordinance). CFL shall obtain all necessary permits and regulatory approvals at its sole cost and expense prior to the commencement of any work.

13. FINANCING: In addition to the CITY funding specified in paragraphs 14 and 22 below, CFL raises funds for the maintenance, operation and improvement of the PARK, over and above the revenues it receives from the PARK programs and activities. In order to implement said improvements, CFL will be required to raise funds through available means of financing. CFL shall, with the approval of City Council, have the right and authority to:
 - a. Collect and use in accordance with this Agreement all revenues collected at the PARK;
 - b. Sub-license concession areas to responsible parties for a period of time less than that remaining of the Term of the Agreement;
 - c. Charge admission and/or rental fees in accordance with paragraphs 10 (b),(c), and (d) above; and
 - d. Raise funds in any other lawful manner

14. FUNDS: During the Term of the Agreement, CFL may accumulate funds received from its operation of the PARK, fundraising, grants and bond measures to be used for the following purpose: (1) Regular operation and maintenance, and (2) Improvements and animal acquisitions.

CFL shall administer and apply funds from the Measure DD Bond Issues and other funds received from the CITY to the implementation of the Master Plan and construction of such improvement projects, or other projects approved by the City, which funds shall be administered by the CFL in accordance with all applicable laws and regulations, applicable bond documents, and funding source restrictions.

It is the intention of the CITY and CFL that improvements in the PARK will be completed in a timely, continuous and expeditious manner.

In order to expedite capital improvements, CFL shall submit annually to OPR, within one hundred fifty (150) days after the end of its fiscal year, a capital improvement budget, spending plan, actual expenses and schedule describing its projected development for the current budget year and for the next two (2) following years.

The total amount of money to be spent annually and the scheduling of development shall be the principal responsibility of the CFL. In the event a disagreement arises concerning the schedule, CFL and OPR shall meet and attempt to resolve such issues at the earliest practical time. Both parties agree to act reasonably and in good faith. In the event that these differences cannot be resolved, final resolution shall rest with the CITY Council.

15. ACCOUNTING/FUND ACCUMULATION/AUDIT: CFL, agrees to comply with City accounting and audit requirements for nonprofit organizations, including any updates and modifications, set forth by the Finance Director, City Auditor and City Administrator during the term of the Agreement. The audit provision shall conform to the requirements outlined in Exhibit (), including the Table of Contract Clauses Related to Financial Responsibilities, and any updates and modifications.
16. REPORT OF EXPENDITURES: CFL shall provide, during the course of the Agreement, reports of expenditures from the proceeds of CITY funds, loan funds from CITY administered programs and grants from programs administered by the CITY. The reports shall be at such frequency and of such content as specified by the CITY Administrator or designee (OPR) and/or the CITY Auditor. Supporting documents may be required to be attached.
17. ACCESS TO RECORDS: CFL shall provide requested records to CITY within five (5) working days of receipt of CITY's request and shall allow CITY access to books and records at all reasonable times. At the option of the CITY, CFL shall provide payroll tax reports, sales tax reports, income tax reports, hazardous materials reports, and other reports filed with federal, state and local government.
18. RECORDS RETENTION: CFL shall maintain financial and operational records until the later of five (5) years after the end of the Agreement or two (2) years after closure of all disputed matters. Such records during the period of the Agreement and the retention period are to be retained at a site of local administration or a storage site nearby with availability to CITY parties in interest.
19. INSURANCE: CFL and/or City, shall provide the insurance listed in **Schedule Q** attached hereto and incorporated herein by reference
20. BONDS AND CONTRACTOR'S INSURANCE: CFL shall require any contractor who performs work on the premises to maintain in force such insurance as may be necessary to assure that the CITY is indemnified and held harmless. In addition, the CITY and CFL shall require as a condition of any contracts for construction, performance bonds and payment bonds in the amounts equal to one hundred percent (100%) of the amount of each contract over \$15,000.00. This amount shall be subject to review at five (5) year intervals by the CITY and CFL. CFL shall be responsible for the labor utilized or materials furnished in the future repair or replacement of facilities at the premises and keep the PARK and CITY's possessory interest therein free and clear of any liens or encumbrances of any kind whatsoever created by CFL's act or omission.

21. **HOLD HARMLESS/INDEMNIFICATION:** Irrespective of any insurance carried by CFL, the CFL 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 operation of the facility and the performance of this Agreement by CFL 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.

22. **CITY SUBSIDIES:**
 - a. In consideration of the services to be performed by CFL for managing, operating and improving the PARK, and its efforts in raising and administering monies from private donations by local businesses and individuals and national and international funds, and governmental contributions, the CITY agrees to subsidize CFL in an annual amount which totals Eighty-Three Thousand (\$83,000.00) dollars.
 1. Such subsidy shall not be deducted from nor reduced by: the approximately three million (\$3,000,000.00) dollars, plus all applicable interest earned in Measure DD bond funds; or any other monies paid to the CITY for the maintenance, operation or improvement of the PARK by any public or private person or entity. The CITY agrees to pay all such funds to CFL promptly in accordance with any terms or conditions required by the donor of any such funds.
 2. CFL may request for CITY Council consideration through the CITY's biannual budget process, an increase in CITY subsidy for the operation and maintenance of the PARK during the term of the Agreement. Such requests shall be submitted to the City Administrator and OPR by no later than the November 1st prior to a new 2-year budget. The request shall state the requested dollar amount, identify operational costs to be covered, explain the need relative to operating costs and projected revenues, and specify the impact if the request is not granted.
 - b. CITY shall pay charges for furnishing water and electricity utilities to, and for removal of garbage and rubbish from, the premises during the term of this Agreement.
 - c. CITY agrees to subsidize payment of the Commercial General

Liability and Property Loss Insurance premiums. (CFL shall pay all deductibles and uninsured losses incurred during operation of the facility.) Beginning the December 5, 2005 policy period and continuing through the duration of the Agreement, the CITY share of the premium cost shall be a total of 70% and CFL shall contribute a total of 30% toward any premium expense incurred by the CITY. Shared responsibility for the premium expense reflects the desire and commitment of CITY and CFL to control losses in PARK operations.

d. CITY shall provide for tree trimming at the PARK.

23. CITY OWNED ANIMALS:

a. All animals and their issue now owned by the CITY and presently existing at the PARK shall be loaned to CFL during the Term hereof for its use in developing and operating the premises; and CFL may, on the CITY'S account, buy, sell, trade and breed said animals during the Term hereof so long as the proceeds therefrom are restricted to the acquisition, breeding and care of other animals. Further, all animals and their issue acquired by CFL subsequent to the execution of this Agreement shall become the property of the CITY. The CITY shall retain legal ownership of all animals and their issue at the PARK. CFL shall have exclusive control over and be responsible for the care, maintenance and feeding of such animals, or disposing of any deceased animals. All animals at the PARK, at the expiration or termination of this Agreement, shall be the sole property of the CITY.

b. Should CFL, from time to time, receive animals by way of donation from third persons, or should CFL acquire animals with its own resources, the ownership of said donated animals shall immediately vest in CITY upon transfer of possession to CFL.

c. CFL shall submit to OPR annually a written inventory of all animals. Said animal inventory is due at the beginning of the CFL's fiscal year.

24. NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES: In carrying out the maintenance and improvements of the subject property, in determining the appropriate fees to be charged, CFL shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial and academic interest in the community, provided that CFL's goal of financial self-sufficiency is not thereby endangered.

CFL and CFL's subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of CFL 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.

CFL shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1 "Declaration of Compliance with the Americans with Disabilities Act," attached hereto and incorporated herein.

This Agreement is subject to the Equal Benefits Ordinance, Municipal Code, Chapter 2.32 requiring contractors on CITY contracts of \$25,000.00 or more to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. The ordinance covers all benefits that an employer offers its employees and their spouses, which include but are not limited to, health benefits, bereavement leave, family leave, retirement benefits, travel and other benefits. Contractor and vendors that do not have employees or do not provide employees with spousal benefits are not required to change their benefits policies. All Contractors shall execute an "Equal Benefits Declaration of Non-Discrimination" which shall be incorporated herein and attached as Schedule C-2 to this Agreement.

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

CFL further agrees that it shall not discriminate against any employee or applicant for employment because of race, creed, religion, sex, sexual preference, color, national origin, age, marital status, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or disability, handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other form of compensation, and selection for training, including apprenticeship.

25. TWENTY PERCENT (20%) LOCAL, SMALL BUSINESS ENTERPRISE PROGRAM (LSBE); LOCAL EMPLOYMENT PROGRAM; FIFTEEN PERCENT (15%) APPRENTICESHIP PROGRAM:

For contracts exceeding \$15,000.00, contractors utilizing subcontractors shall comply with the 20% LBE/SLBE participation requirement for the City's Professional Services Contract Program. 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 the City of Oakland in order to earn credit toward meeting the twenty percent requirement. Additionally, opportunities for training and employment shall be given to residents of the City of Oakland.

This Agreement is subject to the (a) City's Local Employment Program and (b) the 15% Apprenticeship Program.

- (a) The objective of the Local Employment Program for public works and subsidized construction projects is to cause the hiring of Oakland residents on as many Prevailing Wage jobs as possible, and to encourage businesses to hire local residents for non-City-funded work. For any construction contract, subsidy, or development agreement with the City this policy establishes a goal for Oakland-resident employment on public works projects (as such projects are defined in this policy). Specifically, for work performed at the construction site, this policy establishes a goal of 50% of the work hours, which must be performed by Oakland residents on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident. A contractor or developer must achieve the goals or secure an exemption from the City.
- (b) The 15% Apprenticeship Program (Oakland Apprenticeship Workforce Development Partnership System – OAWDPS) requires contractors meet a 15% Oakland resident apprenticeship hire goal that is based on total hours worked and on a craft-by-craft basic. The hours worked may be performed on City of Oakland projects, or 7.5% of the hours worked may be performed by resident apprentices on non-City of Oakland or Oakland Redevelopment Agency projects.

A copy of the (1) Local Small Local Business Enterprise Program (2) Local Employment Program and (3) 15% Apprenticeship Program is attached and shall be incorporated herein as Exhibit ().

All affirmative action efforts of CFL are subject to tracking by the 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 CFL to hire and/or contract with the individual or entity in question.

In the recruitment of subcontractors, the 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.

In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland 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.

26. **LIVING WAGE REQUIREMENTS:** This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000.00 or more, or if it is amended to increase the contract amount by \$25,000.00 in any twelve-month period thereafter. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that CFL 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 \$9.66 with health benefits or \$11.11 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
- 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. CFL 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) – CFL 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. CFL 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. CFL 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 – CFL shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. CFL 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. CFL shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. CFL shall require contractors and subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

27. **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 the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.
- If this Agreement requires Council approval, CFL must sign and date an Acknowledgment of Campaign Contribution Limits Form, attached hereto and incorporated herein as **Schedule O**.
28. **NUCLEAR FREE ZONE DISCLOSURE:** CFL represents pursuant to Schedule **P** (“Nuclear Free Zone Disclosure Form”), that it is in compliance with the City of Oakland’s restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this Agreement, CFL shall complete **Schedule P**, attached hereto.
29. **SUNSHINE ORDINANCE:** All meetings of the CFL Board of Directors shall be conducted pursuant to the provisions of Oakland Municipal Code Section 2.20.040B (City of Oakland Sunshine Ordinance).
30. **POLITICAL PROHIBITION:** Subject to applicable law, funds received pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate’s meetings, engaging in voter registration activity, or for publicity or propaganda designed to support or defeat legislation and ballot measures pending before federal, state, or local government. CFL shall not use the PARK for political purposes, including, but not limited to, political fundraising and campaigning.
31. **CONFLICT OF INTEREST:** The following protections against conflict of interest will be upheld:
- a. CFL 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 herefrom.
 - b. CFL 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 interest, indirect or direct in this Agreement or in its proceeds during his/her tenure or for one year thereafter.
 - c. CFL certifies that no one who has any financial interest in this Agreement or receives compensation for the services from CFL 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, the CITY, CITY Administrator, or the head of the department to which these services are to be provided pursuant to this Agreement.

32. **RIGHT TO INSPECT:** The CITY shall have the right to inspect the premises and operations of CFL from time to time, in a reasonable manner.
33. **MONITORING:** The CITY Council may continually review CFL's performance to insure the success and quality thereof under the terms and conditions of this Agreement. CFL shall present a written report of overall progress to OPR annually, within 180 days after the end of each fiscal year, during the term of this Agreement
34. **NON-ASSIGNMENT OF INTEREST:** CFL shall not assign or otherwise transfer any rights, duties, or obligations or interest in this Agreement, either in whole or in part, without the prior written approval of the CITY Council. The CITY shall not assign this Agreement to a private corporation, firm or individual without the prior written approval of CFL, except as herein provided.
35. **INUREMENT:** This Agreement shall be and is hereby binding on the successors of the parties hereto.
36. **PARKS AND RECREATION ADVISORY COMMISSION:** Any and all matters with respect to this Agreement that require policy approval by the CITY Council, not including administrative decisions by the CITY Administrator that need no such approval, shall be first submitted to the PARKS AND RECREATION ADVISORY COMMISSION which shall, in turn, submit same to the CITY Council in conformance with applicable procedures.
37. **PERSONAL CONTRACT:** The qualifications and identity of CFL are of particular interest to the CITY. Because of those qualifications and identity, the CITY has entered into this Agreement. No voluntary or involuntary successor in interest of CFL shall acquire any rights or powers under this Agreement unless so approved by the CITY Council, and until such successor is in compliance with the applicable rules, procedures and regulations of the Federal Government, the State of California, the County of Alameda and the provisions of this Agreement.
38. **PERMANENT IMPROVEMENTS:** At the conclusion or termination of the Agreement, or any renewals to the Agreement, all permanent fixtures shall become the property of the CITY, except as set forth under Paragraph 11 (c) CONCESSIONAIRES.

39. EASEMENT: CFL agrees the CITY shall retain all rights and duties with respect to the granting and issuance of any and all easements at the PARK to third parties, provided such easements do not interfere with CFL's operations of the PARK. The CITY shall retain all monies, profits, and fees collected pursuant to the granting of such easement rights to any and all third parties. As a courtesy to CFL, the CITY shall notify CFL of the granting of any such easements prior to the effective date of said easement.
40. ILLEGALITY OF CONTRACT: This Agreement is intended to satisfy the conditions of Internal Revenue Service Revenue Procedure 93-17. In the event that any of the obligations under this Agreement shall become null and void by Federal, State or local law, or in the event the future performance of the conditions or terms of this Agreement becomes a hardship for the parties to perform because of Federal, State or local law which is enacted, or court decision rendered, the parties may amend the Agreement to conform with Federal, State or local law, or the CITY may, at its option, terminate this Agreement. The CITY shall not be liable to CFL for any loss or damage or any nature suffered or claim to be suffered by CFL by reason of any modifications to the Agreement or its termination.
41. WASTE OR NUISANCE: CFL shall not commit or permit the commission by others of any waste at the PARK; CFL shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code at the PARK; and CFL shall not use or permit the use of said PARK for any unlawful purpose.
42. WAIVER OF BREACH: The waiver by the CITY of any breach by CFL of any of the provisions of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by CFL either of the same or a different provision of this Agreement.
43. HOLDOVER: Should CFL hold over and continue maintaining and operating the PARK after the end of the Term of this Agreement, with the expressed or implied consent of the CITY, such holding over shall be construed as a continuation of the Agreement from month-to-month and upon the same terms and conditions as herein provided for the previous Agreement. Any holdover shall terminate upon the execution of a new Agreement.
44. CITY'S REPRESENTATIVE: CFL shall be considered the CITY'S representative for the sole purpose of improvements, maintenance and/or construction undertaken at the PARK, including, but not limited to, design, construction, alteration, repair, demolition or excavation of existing structures, buildings, roadways, paths, parking lots, rides and

other facilities and landscaping for which a California contractor's license, general or special, is required.

45. ACCESS TO PUBLIC RECORDS: CFL 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 CFL by the CITY.
46. NOTICES: 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 the CITY by CFL or CFL by the 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

CFL

City of Oakland
Office of the City Administrator
One Frank Ogawa Plaza
Oakland, CA 94612
Attn: Deborah Edgerly

Children's Fairyland
669 Bellevue Ave.

Oakland, CA 94610
Attn: CJ Hirschfield

8. SEVERABILITY: 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.
49. GOVERNING LAW: This Agreement shall be deemed to be made and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the CITY Administrator of the City of Oakland has caused the name of the City of Oakland to be affixed hereto and the CHILDREN'S FAIRYLAND, INC., has caused its name to be affixed, 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 _____, 2004, to execute this Agreement.

CITY OF OAKLAND,
a municipal corporation

CFL
a nonprofit public
interest corporation

By: _____

By: _____

Title: _____

Title: _____

Approved:

Office of the City Attorney