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January 4, 2005

Oakland City Council
Oakland, CA

RE: REPORT SUPPLEMENT AND REVISED 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 \$125,000 FOR INSURANCE PREMIUM COSTS) FOR AN
ESTIMATED ANNUAL TOTAL OF \$276,000

Dear President De La Fuente and Members of the City Council:

SUMMARY

At the direction of the Life Enrichment Committee on December 14, 2004, staff provides this supplemental report and revised resolution authorizing a fifteen-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. The Committee discussed changes to the proposed agreement in three areas, which are presented in this supplemental report for City Council consideration: (1) Insurance payments by CFL and the City; (2) CFL Board of Directors size, composition and selection; and (3) Provision of one free admission day each month at Children's Fairyland for Oakland residents.

Insurance Payments

Under the current holdover agreement, the City pays the Commercial General Liability and

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Property Insurance premiums and deductibles for Children's Fairyland. Staff recommended in the report published for the December 14th meeting of Life Enrichment Committee that the City pay the Property Loss insurance premium, City pay 100% the General Liability premium only in year 1 and require CFL to pay 30% of the General Liability premium in years 2 through 15 of the agreement, and CFL pay uninsured loss, including all deductibles. Due to CFL concerns regarding the fiscal impact of those terms, the City Administrator and CFL subsequently negotiated a revised cost allocation for insurance payments. Staff presented the revisions orally to the Life Enrichment Committee. The revisions are detailed below.

Under the recommended *revised* terms, the City will continue to subsidize payment of the Property Loss Insurance premium (currently \$19,000) and the Commercial General Liability premium (currently \$74,000). The new agreement, however, provides that CFL assume some of the risk, and requires CFL to pay uninsured losses, including any insurance deductibles/retentions, incurred during operation of the facility in a not-to-exceed amount of \$10,000 per loss occurrence. CFL is required to contribute \$10,000 of the premium costs for Commercial General Liability beginning with the December 5, 2005 policy period and continuing through the duration of the Agreement. Shared responsibility for the insurance premium and loss expenses reflects the desire and commitment of the City and CFL to control losses in Park operations.

With the revised insurance terms, insurance premium cost to the City would increase from an annual average of \$95,000 to an annual average of \$125,000. Additionally, the City would be responsible for any uninsured claim greater than \$10,000.

One Free Admission Day Per Month for Oakland Residents

The Committee requested that CFL provide one free admission day per month at Children's Fairyland for Oakland residents, in consideration of admission cost, affordability and park access. With Council approval, the requirement will be incorporated into the management agreement.

Board of Directors Composition and Appointments

Under the current CFL Bylaws, 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. 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. CFL also requested that the number of Directors increase to a total of fifteen. The requested changes were presented orally to the Life Enrichment Committee on December 14, 2004.

The Life Enrichment Committee indicated a strong desire for City representation on the Board and directed that staff and CFL arrive at an agreeable Board composition that would include

both City-appointed and CFL-appointed Directors, for recommendation to the Council.

Staff recommends that the Board of Directors consist of eleven (11) members, of which four (4) will be City-appointed members and seven (7) will be CFL-appointed members. Three of the City representatives will be appointed by the Mayor and confirmed by the City Council, and one will be a City Administrator designee. The Board will be selected from a broad cross-section of people in the Bay Area that reflects the cultural diversity of the Oakland community /East Bay area.

Pursuant to Section 15.03 of the CFL Bylaws, any provisions of the Bylaws providing for the designation, selection, or removal or increase in the number of any Director or Directors may be adopted, amended, or repealed only by at least five (5) members of the Oakland City Council. Therefore, the recommended changes to the Board are also incorporated in the attached Council Resolution for City Council action and approval.

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 \$93,000 in Policy Year 1 (current through December 4, 2005) and an average of \$125,000 per year thereafter (total \$1,875,000). The estimated annual total is \$276,000 (\$83,000 subsidy, \$68,000 utilities and \$125,000 insurance), approximately \$4.1 million for the duration of the 15-year agreement.

The management agreement also stipulates that City will be responsible for any uninsured claim greater than \$10,000. Children's Fairyland has historically had few claims filed against it. In the past five years there have been fewer than two claims per year, averaging \$2,000, none of which was greater than \$10,000. However, this is an expense that would be incurred by the City in the event of a large claim, and should be considered as a potential fiscal impact of the new 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

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30651, Account 53114 & 53115).

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

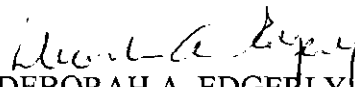
Funds for agreement fiscal years 2 through 15 will be included as part the Agency / Department's future operating budgets.

ACTION REQUESTED OF COUNCIL

Staff requests that the City Council approve the resolution, as revised, 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 \$125,000 for insurance premium costs) for an estimated annual total of \$276,000.

If approved, staff will incorporate into the agreement the revised provisions regarding the insurance payment, Board of Directors size, composition and appointment, and one free admission day per month at Children's Fairyland for Oakland residents.

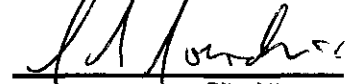
Respectfully submitted,


DEBORAH A. EDGERLY
City Administrator

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

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REVISED

**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 \$125,000 FOR INSURANCE PREMIUM COSTS)
FOR AN ESTIMATED ANNUAL TOTAL OF \$276,000**

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 charges, 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; and

WHEREAS, the CFL Board of Director currently consists of nine members (five members from the Parks and Recreation Advisory Commission and four members from the Lake Merritt Breakfast Club) appointed by the City; and

WHEREAS, CFL desires changes to the size, composition and selection of its Board of Directors and, pursuant to CFL Bylaws Section 15.03, any provisions of the CFL Bylaws providing for the designation, selection, or removal or increase in the number of any Directors or Directors may be adopted, amended, or repealed only by at least five (5) members of the Oakland City Council; 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 ninety-three thousand dollars (\$93,000) in Policy Year 1 (current through December 4, 2005) and an average of one hundred twenty-five thousand dollars (\$125,000) per year thereafter, and any uninsured claim greater than ten thousand dollars (\$10,000); 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: In summary, 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 \$125,000 for insurance premium costs), for an estimated annual total of \$276,000; and be it

FURTHER RESOLVED: That the City Council approve increasing the size of the CFL Board of Directors from the current total of nine (9) members to a new total of eleven (11) members, which shall be selected from a broad cross-section of people in the Bay Area that reflects the cultural diversity of the Oakland community/East Bay area; and be it

FURTHER RESOLVED: That seven (7) of the CFL Board of Directors shall be appointed by CFL and four (4) shall be appointed by the City, of which three (3) shall be appointed by the Mayor and confirmed by City Council and one (1) shall be a City Administrator designee; 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