



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

8

Staff Report
January 19, 2010

**Honorable Mayor and
Members of the City Council**

**Title: Old Sacramento Underground Tours – Agreement and Loan Documents with
Historic Old Sacramento Foundation (HOSF), Inc.**

Location/Council District: Old Sacramento/District 1

Recommendation: Adopt a **Resolution:** 1) approving and authorizing the City Manager or his designee to execute an agreement with HOSF for the operation of a guided tour program of Old Sacramento's underground and hollow sidewalks; 2) approving and authorizing the City Manager to execute a loan agreement with HOSF in the amount of \$185,000 for the funding of start up costs associated with establishing the tour program, 3) accepting delivery of a promissory note by HOSF in the amount of \$185,000 and 4) authorizing the City Manager to make the necessary adjustments to record the loan and record the repayment.

Contact: Barbara E. Bonebrake, Director, (916) 808-8225

Presenters: Marcia Eymann, History Manager, (916) 264-7072

Department: Convention, Culture and Leisure

Division: Center for Sacramento History

Organization No: 17001911

Description/Analysis

Issue: HOSF seeks to establish a specialized guided tour program exploring Old Sacramento's underground and hollow sidewalks. The goal of the program is to create a successful tour program that will draw locals and tourists to the district for a new experience in Old Sacramento, and have them walk away with a new image and understanding of the area.

Significant start-up costs are involved in establishing this program. HOSF is not able to afford these costs. Staff recommends the City's Community Center Fund (Fund 6010) finance the start-up costs and also recommends HOSF and the City enter into an agreement that establishes a repayment plan.

Policy Considerations: The City of Sacramento has a long history of supporting and investing in local cultural activities. Rather than requesting direct financial support, this report instead requests a loan, to be fully repaid with the revenue generated by this new program.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the CEQA guidelines, California Code of Regulations, Title 14, Section 15301, the proposed activities are categorically exempt from CEQA review.

Sustainability Considerations: Not applicable.

Other: Not applicable.

Commission/Committee Action: The HOSF has reviewed and approved this report.

Rationale for Recommendation: As part of the 2005 Gold Rush Days in Old Sacramento, limited tours into Sacramento's underground and hollow sidewalks were offered as part of the weekend events. Those tours quickly sold out leaving many visitors disappointed. Since then, the HOSF has received many calls asking about the start date for future underground tours. Demand is so strong to re-instate these tours that there is currently a list of over 1,000 names of people who wish to be notified once tours are scheduled.

It is the plan of the HOSF to begin these tours by Memorial Day weekend 2010 and have them run weekends through the summer, conducting at least ten tours each day. The plan is structured to allow for expansion beyond weekend tours, should demand warrant it.

Highlights of the proposed program include:

- Giving Sacramento a unique identity as the only city in California to raise its streets;
- Creating packaging opportunities with local business, hotels, tour operators, California State Parks, local museums, and the Sacramento Convention and Visitors Bureau;
- Providing a stable revenue source for HOSF to expand various educational and interpretive programming throughout Old Sacramento;
- Increasing new and repeat visitation of both tourist and locals to Old Sacramento;
- Providing a new activity that is close by and can be shared as a family experience for locals and tourists; and
- Providing quality offerings for visitors to Old Sacramento.

Financial Considerations: Establishing a new, high quality tour program has significant one-time start up costs including physical improvements to the underground areas, specifically wooden walkways and railings in the basements of Hall Luhrs and B.F. Hastings buildings, as well as lighting and addition of an exit door. Funds are also needed for ticket design and printing, staff training, signage and coordination, specialized sound equipment (hearing impaired accessibility), as well as interpretive displays in the underground areas, and projection equipment.

The estimated cost of these initial expenses is \$185,000. Unfortunately, HOSF does not currently have the capacity to fund these costs. Staff is recommending that the City's Community Center Fund (6010) finance the initial expenses and HOSF and the City agree to a loan payment schedule. See Attachment 2 for details.

Due to the public's established interest in this program, it is projected that the revenues are adequate to fully repay the loan within approximately 10 years. Repayment would be based upon 10 percent of gross income or \$25,000 annually, whichever is less. Repayment will include principal and interest payments over a period of approximately 10 years, using a 4 percent interest rate .

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this agreement. However, ESBD guidelines will be considered as a component of the overall process.

Respectfully Submitted by: Barbara E Bonebrake
for Marcia Eymann, History Manager
Center for Sacramento History

Approved by: Barbara E Bonebrake
Barbara E. Bonebrake, Director
Convention, Culture and Leisure Department

Recommendation Approved:

Cassandra H.B. Janning
for Ray Kerridge
City Manager

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Attachment 1**Background**

HOSF seeks to establish a specialized guided tour program exploring Old Sacramento's underground and hollow sidewalks. The goal of the program is to create a successful tour program that will draw locals and tourists to the district for a new experience in Old Sacramento, and have them walk away with a new image and understanding of the area. The tours will be high quality presentations drawn from extensive original historic research. No two tours will be identical. The Historic Old Sacramento Foundation will be recruiting individuals with theatrical backgrounds to serve as tour guides. By utilizing actors, the tours become performances, breathing life and energy into the historical narrative. Guides may present the tour from the point of view of one historical figure or provide a range of different interpretations. These variations will increase repeat visitation. When visitors complete the experience, they will have gained a sense of understanding and awe regarding the massive political and physical achievement it took to raise the streets, and how it permanently changed the City's landscape. Most important of all, they will learn about Sacramento's unique historical identity as the only city in California to raise its streets, and one of only a handful to do so in the entire nation. On the surface, the raising of Sacramento's central business district offers exciting accounts of mishap, controversy, and of course, the pioneer-entrepreneurial spirit that has come to define the early history of not only the city, but the Western United States. The story of the evolution of Sacramento from a frontier settlement to gold rush boom town and eventually to the economic and political hub of California can be best understood as the melding of motives and expectations for settling a new city in the West.

The story of the City of Sacramento begins with John Sutter laying claim to nearly 44,000 acres of land at the confluence of the Sacramento and American rivers in 1840. His hold on the land is short lived as gold is discovered at Sutter's mill near Coloma in 1848. Sutter did his best to keep the discovery secret, but when a local teamster that worked for Sutter attempted to pay, with gold, for a bottle of brandy at the C.C. Smith Store at Sutter's Fort, (owned by Smith and his partner Sam Brannan) the proverbial cat was out of the bag. Brannan quickly stocked up on goods, and scouted for a new and more strategic location closer to the natural flow of traffic up river toward the gold fields. Brannan first approached the residents of Sutterville, offering them the opportunity of future riches as the economic hub of the area if they would give him free land for his business and warehouse. Brannan was rejected, and he quickly moved to his second location up the Sacramento River at the foot of modern K Street. He laid claim to a small clearing used by Sutter's men as a boat landing known as Sutter's Embarcadero. Brannan overrode the claims of previous occupants, erected a few tents and set up shop. With this simple act he selected the location of the present-day city of Sacramento. The site, however, had its problems, and some believe Brannan knew this at the time as he had literally pulled driftwood from the trees along the Embarcadero, wood that could only have been left behind from heavy flooding. The concept of a geographically better position, secure from flooding, was overruled by Brannan's command of goods and capital exercising the defining role in the city's location. Despite being in the flood plain, the strategically located embarcadero trumped any fears generated by Mother Nature. This was the beginning of Sacramento's problems with flooding, all based on the desire to capitalize on the incoming flow of miners in search of goods and supplies in their quest for gold, and not on the flow

of water of two powerful rivers that were both the life blood of the City and its most imminent threat.

This is the story our Underground Tours will tell and many more related to the City's efforts to control nature by building levees, altering the flow of the rivers and ultimately the physical raising of its streets and buildings.

Attachment 2

Program Financial Projections

**UNDERGROUND TOURS
Program Financial Projections
December 17, 2009**

START UP

TOTAL
BUDGET

Physical Plant

Pathway lighting		\$10,000
Upgrades to BF Hastings Building & Park		\$20,000
Upgrades to Hall Luhrs Building (decking, pathways)		\$20,000

Products for Tours and Resale

LED Lights as give-away	(500 @ \$2.50)	\$1,250
Helmet (re-usable)	(90 @ \$6.00)	\$540
Guidebook	(5,000 @ \$5.00)	\$25,000
T-shirts	(500 @ \$8.99)	\$5,000
Hats	(100 @ \$9.00)	\$900
Flashlights	(100 @ \$3.00)	\$300

Program Administration and Development

Ticket Design and Printing		\$500
Docent Training Coordinator/Volunteer Recruitment (Year 1)		\$30,000
Half-Time Assistant for Tour Coordination (Year 1)		\$12,000
3-4 Speakers for docent training		\$1,500
Training materials & supplies		\$3,000
Web Site design/Marketing		\$5,000
Exhibition (props, photos, text, panels)		\$5,000
PA or Mics		\$1,000
Signs		\$1,500
Antenna Audio (audio tour system)		\$15,000
ADA Film for alternative experience		\$10,000
Projector for ADA Film		\$3,500
Computer		\$1,500
subtotal Admin and Development		<u>\$89,500</u>
Contingency		\$12,510
		<u>\$185,000</u>

Operating Budget - Year 1				OPTION 1	OPTION 2
annual operating plan with staffing for weekend tours only					
INCOME					
Fees	Adults	(17 and up)	\$17.50		
	Youth	(6-17)	\$12.00		
	Child	(5 and under)	Free		
OPTION 1					
Tours of 15 each 70% adult; 30% Youth x 10 per day x 50 days per year (May - Oct)					
	11 Adults @	\$17.50	\$192.50		
	4 Youth @	\$12.00	\$48.00		
				\$84,175	
Annual Income: \$240.00 per tour x 10 tours x 50 days 70% capacity on \$120,250					
OPTION 2					
Tours at 20 each 70% adult; 30% youth x 10 per day x 50 days per year					
	14 Adults @	\$17.50	\$245.00		
	6 Youths @	\$12.00	\$72.00		
				\$134,725	
Annual Income: \$317.00 per tour x 10 tours x 50 days 85% capacity on \$158,500					
Retail Sales	150 people per day x \$2.00 per visit x 50 days			\$15,000	
	200 people per day x \$3.0 per visit x 50 days				\$30,000
TOTAL INCOME				\$99,175	\$164,725
COST OF GOODS SOLD					
50% of retail for estimating purposes				-\$7,500	-\$15,000
GROSS MARGIN				\$91,675	\$149,725
EXPENSE					
Debt Service Collected				\$9,168	\$14,972
Coordinator and Assistant funded by Capital Investment for Year 1 Note: funded year 1 from start up loan				\$42,000	\$42,000
Tour Guides (10 tours per day x 50 days x \$13.00 per hour (3 Tour guides per day, 6 hour days = \$234.00 per day)				\$11,700	\$11,700
Administration (estimate)				\$5,000	\$5,000
Manager cost percentage				\$5,000	\$5,000
Public Relations/Marketing				\$10,000	\$10,000
Ticket Reprinting				\$500	\$500
Supplies				\$1,000	\$1,000
TOTAL EXPENSE				\$84,368	\$90,172
TOTAL INCOME (LOSS)				\$7,307	\$59,553

RESOLUTION NO. 2010-

Adopted by the Sacramento City Council

January 19, 2010

OLD SACRAMENTO UNDERGROUND TOURS – AGREEMENT AND LOAN DOCUMENTS WITH HISTORIC OLD SACRAMENTO FOUNDATION (HOSF), INC.

BACKGROUND

- A. The HOSF seeks to establish a specialized guided tour program exploring Old Sacramento's underground and hollow sidewalks.
- B. The goal of the program is to create a successful tour program that will draw locals and tourists to the district for a new experience in Old Sacramento, and have them walk away with a new image and understanding of the area. The tours will be high quality presentations drawn from extensive original historic research.
- C. There are significant start-up costs involved in establishing this program. HOSF is not able to afford these costs. The City's Community Center Fund (6010) will finance the start up costs and HOSF and the City will enter into an agreement (see Exhibit A) establishing a repayment plan.
- D. The loan amount to is \$185,000, to be repaid over approximately 10 years (see Exhibit B) using a 4 percent interest rate.
- E. The tour program will operate under the auspices of the Historic Old Sacramento Foundation (HOSF) and under the Operations Agreement in Exhibit C.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The agreement with the Historic Old Sacramento Foundation (HOSF) for the operation of a guided tour program of Old Sacramento's underground and hollow sidewalks is approved, and the City Manager or his designee is authorized to execute the agreement.
- Section 2. The loan Agreement with HOSF in the amount of \$185,000 for the funding of start up costs associated with establishing the tour program is approved, and the City Manager or his designee is authorized to execute the agreement.
- Section 3. Delivery of a promissory note by HOSF in the amount of \$185,000 is accepted.

Section 4. Authorizing the City Manager or his designee to make the necessary adjustments to record the loan and record the repayment.

Section 5. Exhibits A, B and C are part of this Resolution.

Exhibit A – Loan Agreement

Exhibit B – Promissory Note

Exhibit C – Operations Agreement



City of Sacramento

Tax ID # if applicable:

Requires Council Approval: No **YES** Meeting: 1/19/10

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: LOAN AGREEMENT \$ Not to Exceed: \$ 185,000		PO Type: Select PO Type	Attachment: Original No.: Original Doc Number:
Other Party: Historic Old Sacramento Foundation, Inc.		Certified Copies of Document::	
Project Name: Underground Sidewalks Tour Program		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate	
Project Number:	Bid Transaction #:	E/SBE-DBE-MWBE:	

Department Information

Department: CCL
 Project Mgr: Marcia Eymann
 Contract Services: _____ Date: _____
 Phone Number: 916 808-7072
 Comment: _____

Division: _____
 Supervisor: Barbara Bonebrake
 Division Mgr: Marcia Eymann
 Org Number: 17001911

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	_____	_____
Accounting:	_____	_____
Contract Services:	_____	_____
Supervisor:	_____	_____
Division Manager:	<i>M. Eymann</i>	1/12/10
City Attorney	Signature or Initial	Date
City Attorney:	<i>AC</i>	1/12/10

Send Interoffice Mail Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director	_____	_____
Department Director:	_____	_____
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>	_____	_____

Contract Cover/Routing Form: Must Accompany ALL Contracts;
 however, is not part of the contract. (01-01-09)

For City Clerk Processing

Finalized:
 Initial: _____
 Date: _____

Imaged:
 Initial: _____
 Date: _____

Received:
 (City Clerk Stamp Here)

RECEIVED
 CITY CLERK'S OFFICE
 CITY OF SACRAMENTO
 2010 JAN 12 P 12:11

LOAN AGREEMENT

This loan agreement ("Loan Agreement") is made by and between the **Historic Old Sacramento Foundation, Inc.**, a California non-profit public benefit corporation ("HOSF" or "Borrower") and the **City of Sacramento** ("City" or "Lender") as of _____, 2010.

Recitals

- A. The HOSF desires to organize, offer and promote public underground tours in Old Sacramento ("Underground Tours").
- B. The HOSF and City intend to enter into an agreement which will set forth the various duties, commitments and tasks each party is to perform in order to offer the Underground Tours ("Tour Agreement").
- C. The City would like to make a loan to HOSF to assist in the initial start up costs associated with offering the Underground Tours.
- D. The parties intend to execute the Tour Agreement concurrently with the execution of this Loan Agreement.
- E. The City and HOSF now desire to enter into this Loan Agreement and to be bound by the terms and conditions stated herein.

NOW, THEREFORE, based on the facts set forth in the foregoing recitals, the City and HOSF agree as follows:

Article 1. Definitions

1. "Obligations" means all liabilities and obligations of the Borrower to Lender of every kind and description, direct, absolute or contingent, due or to become due, whether now existing or hereafter executed and delivered by Borrower to Lender or under any agreement between Borrower and Lender or by operation of law, whether or not evidenced by any written agreement, document, or promissory note or other instrument, including duties to perform acts and refrain from taking action as well as obligations to pay money.

2. "Loan Balance" means the then-outstanding amount of Borrower's indebtedness to Lender incurred pursuant to this Loan Agreement.

Article 2. Loan

1. Loan. The City agrees to lend the sum of one-hundred and eighty-five thousand dollars (\$185,000.00) to Borrower ("Loan Amount"), which amount shall be repaid in the manner and subject to the terms of this Loan Agreement. Borrower agrees to execute a promissory note payable to Lender concurrent with the execution of this Loan Agreement in the form of Exhibit "A" hereto ("Note"). The execution and delivery of the Note shall not constitute payment, satisfaction or release of the Obligations.

2. **Interest.** The interest rate on the Loan Amount hereunder shall accrue at the percentage rate of 4.0% per annum ("Interest Rate"). Interest shall be computed on the basis of a 360-day year. Interest shall continue to accrue during such time any portion of the Loan Amount remains outstanding.

3. **Repayment.** Borrower shall repay the Loan Amount, with interest, in ten (10) installment payments. Each installment payment shall be equal in amount to : ten percent (10%) of the Underground Tours Program's yearly gross revenues or \$25,000, whichever is less.

The installment payments shall be due and payable as follows:

<u>INSTALLMENT</u>	<u>DUE DATE</u>	
1	July 31, 2011	
2	July 31, 2012	
3	July 31, 2013	
4	July 31, 2014	
5	July 31, 2015	
6	July 31, 2016	
7	July 31, 2017	
8	July 31, 2018	
9	July 31, 2019	
10	July 31, 2020	Outstanding balance and accrued interest.

At the time of each payment of principal, Borrower shall pay all accrued interest at the rate set forth in Section 2 of Article 2 above. Lender shall provide Borrower with a statement of accrued interest due and owing no later than 10 days prior to each payment date specified above. Borrower may repay all or a portion of the Loan Balance at any time prior to the due date of any of the foregoing installments. All payments made by Borrower hereunder will be credited first to accrued interest then due and the remainder will be credited to the outstanding principal amount of the loan.

Article 3. Conditions to Making of Loan

Lender shall not be obligated to fund any loan made under this Loan Agreement unless and until all of the following conditions are satisfied:

- A. Borrower approves and executes this Loan Agreement;
- B. Borrower approves, executes, and delivers the Tour Agreement and the Note;
- C. The City Council approves the Tour Agreement and this Loan Agreement;

Notwithstanding any other provision of this Loan Agreement, ninety percent (90%) of the Loan Amount may be withheld from Borrower until Borrower secures long term license agreements, for terms not less than five years, with the owners of the Eagle Theater, BF Hastings building, and Hall Luhrs building, in forms acceptable to the Office of the City Attorney. If Borrower does not secure license agreements with these parties by May 1, 2010, this Loan Agreement shall be voidable at the sole option of the City.

Article 4. Representations, Warranties and Covenants

Borrower represents, warrants and covenants to Lender as follows:

A. No Violation of Law or Agreement; Authority. The execution, delivery and performance of this Loan Agreement are not in contravention of law or of any indenture, agreement or undertaking to which Borrower is a party or by which Borrower is bound and the same are within Borrower's corporate powers, have been duly authorized, and are not in contravention of Borrower's charter, bylaws or other corporation documents. No further action or proceeding is required in order for the person signing this Loan Agreement on behalf of Borrower to bind the Borrower to the terms hereof.

B. Qualified Corporation. Borrower is duly organized and existing under the laws of the State of California and is duly qualified and in good standing.

C. Use of Loan Proceeds. Borrower agrees that the funds loaned to Borrower hereunder are to be used to meet operating expenses of the HOSF in presenting the Underground Tours only, and further that operating expenses do not include the satisfaction of any debt to any persons or entities. As used herein, "operating expenses" shall include those expenses incurred in presenting the Underground Tours, but shall not include the payment of any unpaid expenses relating to any HOSF activity in 2009 or earlier. In addition, "operating expenses" shall not include the repayment of any loan or other financing, including the Loan Balance herein. Borrower agrees that, until expended, the funds loaned hereunder shall be kept in a segregated account and shall be identified as funds obtained pursuant to this Loan Agreement.

Article 5. Inspection of Records; Further Assurances; Financial Reports

1. Records. At all times Borrower shall allow Lender, by or through any of Lender's officers, agents, employees, attorneys and accountants, to possess, to make full use of in aid of Lender's rights under this Loan Agreement, and to examine, audit and make extracts and copies from Borrower's records, and, for the purposes or to aid Lender in the enforcement of any rights under this Loan Agreement, to enter, to remain on, and, without cost to Lender, to use the premises of Borrower or wherever the records may be found, as often and for so long as Lender may desire.

2. Assurances. Borrower shall do all reasonable things required by Lender in order more completely to vest Lender's rights under this Loan Agreement.

3. Financial Reports. Borrower agrees to furnish to Lender, on or before the fifteenth (15th) of July of each year in which there is an outstanding Loan Balance, an independent annual financial statement for the previous fiscal year. The statement shall consist of a balance sheet, income statement, and supplemental schedule of gross receipts and expenditures for the previous fiscal year. The statement shall be prepared by a certified public accountant, on the accountant's stationary, for the Borrower.

Article 6. Events of Default; Acceleration

1. Default. All Obligations, notwithstanding any time or credit allowed by any instrument evidencing a liability, shall be accelerated and become immediately due and payable, without notice or demand, on the occurrence of any of the following events of default:

- A. Borrower fails to make any payment or to perform any Obligation promptly when due after written notice of such failure and Borrower's failure to cure within five (5) business days following receipt of said notice.
- B. Any warranty, representation, or statement made or furnished to Lender by or on behalf of Borrower is false in any material respect when made or furnished.
- C. Any of the following occurs; it being expressly agreed that on the happening of any event described below, Borrower shall immediately give written notice of the event or fact to Lender:
 - (i) Dissolution, termination of existence, insolvency, appointment for the benefit of a receiver for any part of the property of, assignment for the benefit of creditors by, or commencement of any proceeding under any bankruptcy or insolvency law by or against, Borrower;
 - (ii) Entry of a court order that enjoins, restrains, or in any way prevents Borrower from conducting all or any part of its affairs in the ordinary course;
 - (iii) Failure to pay any federal, state, or local tax or other debt of Borrower unless the same is being contested in good faith;
 - (iv) Borrower stops offering or promoting the Underground Tours during the term of the Tour Agreement;
 - (v) Borrower breaches any covenant, term or condition of the Tour Agreement or any amendment thereto.

Article 7. Rights and Remedies

Lender's Rights and Remedies. On the occurrence of any event of default, and at any time thereafter, Lender shall have the rights and remedies of a creditor under any and all applicable laws in addition to the rights and remedies provided in this Loan Agreement or in any other instrument or paper executed by Borrower. All of Lender's rights, powers, and remedies are cumulative and none is exclusive.

Article 8. Application of Payments

Application. All payments made by or on behalf of Borrower, and all credits due to Borrower, may be applied and reapplied in whole or in part to any of the Obligations to the extent and in the manner that Lender may elect.

Article 9. Termination

Termination of Agreement. Lender may terminate this Loan Agreement on immediate notice at any time after occurrence of any event of default described in Article 6. Borrower, at the termination date, shall make payment in full of the Obligations, whether evidenced by installment notes or otherwise, and whether or not all or any part of the Obligations may otherwise then be due and payable by Borrower to Lender. Termination of this Loan Agreement shall not in any way affect

or impair any right of Lender arising before or by reason of the termination, nor shall termination relieve Borrower of any obligation to Lender under this Loan Agreement or otherwise until all of the Obligations are fully paid and performed, nor shall termination affect any right or remedy of Lender arising from the Obligations, and all agreements, warranties, and representations of Borrower shall survive termination.

Article 10. Waivers

1. **No Waiver by Lender.** The failure at any time or times hereafter to require strict performance by Borrower of any of the provisions, warranties, terms, and conditions contained in this Loan Agreement or any other agreement, document, or instrument now or hereafter executed by Borrower and delivered to Lender, shall not waive, affect, or diminish any right of Lender hereafter to demand strict compliance and performance under this Loan Agreement and with respect to any other provisions, warranties, terms, and conditions contained in other agreements, documents, and instruments. Any waiver of any default shall not waive or affect any other default, whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained in this Loan Agreement or any other agreement, document, or instrument now or hereafter executed by Borrower and delivered to Lender shall be deemed to have been waived by any act or knowledge of Lender or Lender's agents, officers, or employees, but can be waived only by an instrument in writing, signed by an officer of Lender and directed to Borrower, specifying the waiver.

2. **Notices.** Borrower waives any and all notice or demand which Borrower might be entitled to receive with respect to this Loan Agreement by virtue of any applicable statute or law, and, except in regard to the notice required under Article 6, Section 1.A. of this Agreement, waives demand, protest, notice of protest, notice of default or dishonor, notice of payments and nonpayments, or of any default release, compromise, settlement, extension, or renewal of all contract rights, instruments, guaranties, and otherwise, at any time held by Lender on which Borrower may in any way be liable, notice of nonpayment at maturity of any and all accounts, instruments, or chattel paper, or notice of any action taken by Lender unless expressly required by this Loan Agreement, and hereby ratifies and confirms whatever Lender may do pursuant to this Loan Agreement.

Article 11. Miscellaneous Provisions

1. **Binding Effect of Agreement.** This Loan Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors, representatives, and assigns.

2. **Governing Law; Submission to Jurisdiction.** The validity, interpretation, enforcement, and effect of this Loan Agreement shall be governed by the laws of the State of California. Borrower hereby consents to the jurisdiction of all courts in California, with venue situated in the County of Sacramento.

3. **Severability.** In the event that any provision of this Loan Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed on any law by any court, this Loan Agreement shall be construed as not containing the invalid provision. The invalidity of the provision shall not affect the validity of any other provision of this Loan Agreement. Any and all other provisions of this Loan Agreement that are otherwise lawful and valid shall remain in full force and effect.

4. **Notices and Payments.** Any notice, payment, or refund required under this Loan Agreement or by reason of the application of any law shall be deemed to have been given by either

party when the same shall have been deposited in the U.S. mail, postage prepaid and addressed as follows:

- (A) If to Borrower: Historic Old Sacramento Foundation
101 "I" Street
Sacramento, CA 95814

- (B) If to Lender: City of Sacramento
Convention, Culture and Leisure Department
1030 – 15th Street, Suite 250
Sacramento, CA 95814

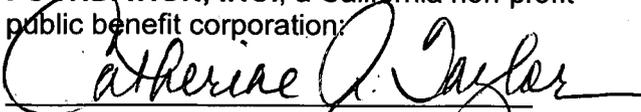
5. Attorney's Fees. If, at any time or times hereafter, Lender employs counsel, whether outside counsel or its City Attorney's Office, to commence, defend, or intervene, file a petition, complaint, answer, motion, or other pleadings, or to take any other action in or with respect to any suit or proceeding relating to this Loan Agreement, instrument, or document heretofore, now or hereafter executed by Borrower and delivered to Lender, or to represent Lender in any litigation with respect to the affairs of Borrower, or to enforce any rights of Lender; or the Obligations, or any other person, firm, or corporation that may be obligated to Lender by virtue of this Loan Agreement or any other agreement, document, or instrument heretofore, now, or hereafter delivered to Lender by or for the benefit of Borrower; then in any of those events, all of the reasonable attorneys' fees arising from those services, and any expenses, costs and charges relating to those services, shall constitute additional Obligations, payable on demand.

6. Effect of Headings. Headings of articles and sections in this Loan Agreement shall not have any legal effect but are provided only to facilitate the reading of the text.

7. Third Parties. This Loan Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with this Loan Agreement, the Note, or any other related document to which it is not a party.

8. Effective Date. This Loan Agreement shall not become effective until executed by Lender.

Borrower:
**HISTORIC OLD SACRAMENTO
FOUNDATION, INC.**, a California non-profit
public benefit corporation:


by: CATHERINE A. TAYLOR, CHAIRMAN
[print name and title of signer]

Dated: 1/12/2010

Lender:
CITY OF SACRAMENTO:

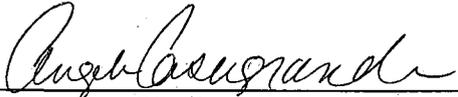
Assistant City Manager

Dated: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:



Sr. Deputy City Attorney



City of Sacramento

Tax ID # if applicable:

Requires Council Approval: No **YES** Meeting: 1/19/10

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: PROMISSORY NOTE		PO Type: Select PO Type	Attachment: Original No.:
\$ Not to Exceed: \$ 185,000			Original Doc Number:
Other Party: Historic Old Sacramento Foundation, Inc.		Certified Copies of Document::	
Project Name: Underground Sidewalks Tour Program		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate	
Project Number:	Bid Transaction #:	E/SBE-DBE-M/WBE:	

Department Information

Department: CCL Division:

Project Mgr: Marcia Eymann Supervisor: Barbara Bonebrake

Contract Services: Date: Division Mgr: Marcia Eymann

Phone Number: 916 808-7072 Org Number: 17001911

Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		
Accounting:		
Contract Services:		
Supervisor:		
Division Manager:	<i>Marcia Eymann</i>	1/12/10
City Attorney	Signature or Initial	Date
City Attorney:	<i>AC</i>	1/12/10

Send Interoffice Mail Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director		
Department Director:		
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>		

Contract Cover/Routing Form: Must Accompany ALL Contracts;
however, is not part of the contract. (01-01-09)

For City Clerk Processing

Finalized:

Initial: _____

Date: _____

Imaged:

Initial: _____

Date: _____

Received:
(City Clerk Stamp Here)

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
JAN 12 2010 12:11

PROMISSORY NOTE

\$185,000.00

Sacramento, California

Dated: 1/12/10

FOR VALUE RECEIVED, the undersigned, the HISTORIC OLD SACRAMENTO FOUNDATION, a California non-profit public benefit corporation ("Payor"), promises to pay to the CITY OF SACRAMENTO ("Payee"), or order, at City of Sacramento, Department of Convention, Culture and Leisure, 1030 - 15th Street, Suite 250, Sacramento, California 95814, or at such other place as the holder hereof may from time to time designate in writing, the principal sum of ONE-HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$185,000.00), together with interest on the unpaid principal balance of this Promissory Note ("Note"), calculated at the interest rate of four percent (4.0%) per annum. Ten installments of principal and interest, equal in amount to ten percent (10%) of the Underground Tours Program's yearly gross revenues, or \$25,000, whichever is less, shall be due and payable as follows:

<u>INSTALLMENT</u>	<u>DUE DATE</u>	
1	July 31, 2011	
2	July 31, 2012	
3	July 31, 2013	
4	July 31, 2014	
5	July 31, 2015	
6	July 31, 2016	
7	July 31, 2017	
8	July 31, 2018	
9	July 31, 2019	
10	July 31, 2020	Outstanding balance and accrued interest.

At the time of each payment of principal, Borrower shall pay all accrued interest at the rate set forth in paragraph 3 below. Lender shall provide Borrower with a statement of accrued interest due and owing no later than 10 days prior to each payment date specified above.

1. Payments on the outstanding principal and interest due on this Note shall commence on July 31, 2011. All principal and accrued unpaid interest on this Note shall be due and payable in full on or before July 31, 2020. Any interest or principal not paid when due shall bear interest at the rate of ten percent (10%) per annum until paid.
2. All payments will be credited first against accrued interest then due, and the remainder will be credited to principal.

3. Interest shall accrue on the outstanding principal balance at the interest rate of 4% per annum. Interest shall be computed on the basis of a 360-day year. Interest shall continue to accrue during such time any portion of the principal amount remains outstanding.
4. At the option of the holder hereof, this Note shall become immediately due and payable, without further notice or demand, upon the occurrence at any time of any of the following events:
 - (a) Default in the payment of any installment due hereunder after written notice of such default and Payor's failure to cure within five (5) business days following receipt of said notice;
 - (b) Any warranty, representation, or statement made or furnished to Payee by or on behalf of Payor is false in any material respect when made or furnished;
 - (c) Any of the following occurs, it being expressly agreed that on the happening of any event described below, Payor shall immediately give written notice of the event or fact to Payee:
 - (i) Dissolution, termination of existence, insolvency, appointment for the benefit of a receiver for any part of the property of, assignment for the benefit of creditors by, or commencement of any proceeding under any bankruptcy or insolvency law by or against, Payor;
 - (ii) Entry of a court order that enjoins, restrains, or in any way prevents Payee from conducting all or any part of its affairs in the ordinary course;
 - (iii) Failure to pay any federal, state, or local tax or other debt of Payor unless the same is being contested in good faith;
 - (iv) Payor stops organizing, offering or promoting Underground Tours;
 - (v) Payor breaches any covenant, term or condition of the Tour Agreement or any amendment thereto.
5. If this Note is not paid when due, whether at maturity or by acceleration, Payor, and every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, promise to pay all costs of collection, including, but not limited to, reasonable attorneys' fees, whether incurred by outside counsel or the City Attorney's Office, and whether or not suit is filed hereon. Additionally, the holder hereof shall be entitled to reimbursement for all attorneys' fees and costs incurred in enforcing any judgment arising from or out of this Note which shall not merge into said judgment and may be added to the judgment and substantiated by supplemental cost bill.

6. Payor, every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, waive presentment, demand, protest, notice of protest, notice of dishonor, notice of nonpayment, and notice of any kind with respect to this Note or any guarantee of it.
7. Principal and interest shall be payable in lawful money of the United States.
8. This Note may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.
9. This Note may be prepaid at any time without penalty.
10. A late charge of ten percent (10%) of any installment not paid within ten (10) days of the due date thereof shall be paid to Payor in addition to any other amount(s) due under this Note.
11. The rights, duties, and obligations of Payor and Payee hereunder shall be binding upon and inure to the benefit of their respective successors, representatives, receivers, trustees, and assigns, if any.

"PAYOR"

HISTORIC OLD SACRAMENTO
FOUNDATION, INC.

By: Catherine A. Taylor

CATHERINE A. TAYLOR

[type or print name of signer]

CHAIRMAN

[type or print title of signer]

1/12/2010



City of Sacramento

Tax ID # if applicable:

Requires Council Approval: No **YES** Meeting: 1/19/10

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: PROMISSORY NOTE		PO Type: Select PO Type	Attachment: Original No.:
\$ Not to Exceed: \$ 185,000			Original Doc Number:
Other Party: Historic Old Sacramento Foundation, Inc.		Certified Copies of Document::	
Project Name: Underground Sidewalks Tour Program		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate	
Project Number:	Bid Transaction #:	E/SBE-DBE-M/WBE:	

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Department: CCL Division:
 Project Mgr: Marcia Eymann Supervisor: Barbara Bonebrake
 Contract Services: Date: Division Mgr: Marcia Eymann
 Phone Number: 916 808-7072 Org Number: 17001911
 Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		
Accounting:		
Contract Services:		
Supervisor:		
Division Manager:	<i>Marcia Eymann</i>	1/12/10
City Attorney	Signature or Initial	Date
City Attorney:	<i>AC</i>	1/12/10

Send Interoffice Mail Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director		
Department Director:		
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>		

Contract Cover/Routing Form: Must Accompany ALL Contracts;
 however, is not part of the contract. (01-01-09)

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Finalized:
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RECEIVED
 CITY CLERK'S OFFICE
 CITY OF SACRAMENTO
 2010 JAN 12 PM 12:11

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\$185,000.00

Sacramento, California

Dated: 1/12/10

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 - (b) Any warranty, representation, or statement made or furnished to Payee by or on behalf of Payor is false in any material respect when made or furnished;
 - (c) Any of the following occurs, it being expressly agreed that on the happening of any event described below, Payor shall immediately give written notice of the event or fact to Payee:
 - (i) Dissolution, termination of existence, insolvency, appointment for the benefit of a receiver for any part of the property of, assignment for the benefit of creditors by, or commencement of any proceeding under any bankruptcy or insolvency law by or against, Payor;
 - (ii) Entry of a court order that enjoins, restrains, or in any way prevents Payee from conducting all or any part of its affairs in the ordinary course;
 - (iii) Failure to pay any federal, state, or local tax or other debt of Payor unless the same is being contested in good faith;
 - (iv) Payor stops organizing, offering or promoting Underground Tours;
 - (v) Payor breaches any covenant, term or condition of the Tour Agreement or any amendment thereto.
5. If this Note is not paid when due, whether at maturity or by acceleration, Payor, and every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, promise to pay all costs of collection, including, but not limited to, reasonable attorneys' fees, whether incurred by outside counsel or the City Attorney's Office, and whether or not suit is filed hereon. Additionally, the holder hereof shall be entitled to reimbursement for all attorneys' fees and costs incurred in enforcing any judgment arising from or out of this Note which shall not merge into said judgment and may be added to the judgment and substantiated by supplemental cost bill.

6. Payor, every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, waive presentment, demand, protest, notice of protest, notice of dishonor, notice of nonpayment, and notice of any kind with respect to this Note or any guarantee of it.
7. Principal and interest shall be payable in lawful money of the United States.
8. This Note may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.
9. This Note may be prepaid at any time without penalty.
10. A late charge of ten percent (10%) of any installment not paid within ten (10) days of the due date thereof shall be paid to Payor in addition to any other amount(s) due under this Note.
11. The rights, duties, and obligations of Payor and Payee hereunder shall be binding upon and inure to the benefit of their respective successors, representatives, receivers, trustees, and assigns, if any.

"PAYOR"

HISTORIC OLD SACRAMENTO
FOUNDATION, INC.

By: Catherine A. Taylor

CATHERINE A. TAYLOR

[type or print name of signer]

CHAIRMAN

[type or print title of signer]

1/12/2010



City of Sacramento

Tax ID # if applicable:

Requires Council Approval: No YES Meeting: 1/19/10

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: UNDERGROUND TOURS AGREEMENT \$ Not to Exceed: \$ N/A	PO Type: Select PO Type	Attachment: Original No.: Original Doc Number:
Other Party: Historic Old Sacramento Foundation, Inc.		Certified Copies of Document::
Project Name: Underground Sidewalks Tour Program		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-DBE-MWBE:

Department Information

Department: CCL Division:
 Project Mgr: Marcia Eymann Supervisor: Barbara Bonebrake
 Contract Services: Date: Division Mgr: Marcia Eymann
 Phone Number: 916 808-7072 Org Number: 17001911
 Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		
Accounting:		
Contract Services:		
Supervisor:		
Division Manager:	<i>Marcia Eymann</i>	1/12/10
City Attorney	Signature or Initial	Date
City Attorney:	<i>AC</i>	1/12/10

Send Interoffice Mail Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director		
Department Director:		
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>		

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

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Imaged:
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Date: _____

Received:
(City Clerk Stamp Here)

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
JAN 12 2010 12:11 PM

**AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND
THE HISTORIC OLD SACRAMENTO FOUNDATION FOR THE PROVISION OF
UNDERGROUND TOURS IN OLD SACRAMENTO**

This Agreement, by and between the City of Sacramento ("City") and the Historic Old Sacramento Foundation, a California non-profit public benefit corporation, ("HOSF") is made as of _____, 2010. HOSF and City may be referred to in the singular as "Party" or collectively as "Parties", as the context requires.

RECITALS

- A. In September of 2005, limited underground tours were offered as part of the 2005 Gold Rush Days in Old Sacramento, which quickly sold out. Since then, the HOSF has received hundreds of calls asking about additional tours and currently has a list of approximately 1,000 names of individuals who would like to be notified when tours recommence.
- B. The underground tours are projected to provide financial, cultural, educational, and recreational benefits to both the citizens of Sacramento and to the visitors drawn by the program.
- C. In addition to the benefits described above, this program will continue to heighten the national and international prestige and renown of the City of Sacramento.
- D. The City of Sacramento and the HOSF desire to begin offering tours.

NOW, THEREFORE, based on the facts set forth in the foregoing recitals, the City and HOSF agree as follows:

- 1. **TERM.** This Agreement shall be effective as of the date it is made above and shall terminate on July 31, 2020 ("Term"), unless sooner terminated as provided herein.
- 2. **PROGRAM.** HOSF agrees to provide specialized guided tours to the public, exploring Old Sacramento's underground and hollow sidewalks ("Underground Tours" or "Program"), and further agrees to:
 - A. Fund and pay for all costs associated with the Program;
 - B. Conduct Underground Tours not less than fifty (50) days per calendar year;
 - C. Perform physical improvements necessary to present the Program, including the making of building improvements in compliance with all laws, and the installation and maintenance of fixtures and exhibits;
 - D. Execute and manage all construction and other contracts related to the Program, including management of the permitting process;
 - E. Present the Program in compliance with the requirements of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.

3. **LICENSE AGREEMENTS.** No later than May 1, 2010, HOSF shall enter into long term license agreements for the use of the Eagle Theater, BF Hastings and Hall Luhrs buildings for terms not less than five years, in forms acceptable to the Office of the City Attorney.
4. **CITY LOAN.** City agrees to loan to HOSF the sum of one-hundred and eighty-five thousand dollars (\$185,000.00) under the terms and conditions set forth in the "Loan Agreement" attached hereto as Exhibit A and incorporated herein as though set forth in full.
5. **NOTICES.** Notices to the Parties as provided by this Agreement shall be given by United States mail, postage prepaid as follows:

To City:

City of Sacramento
 1030 15th Street, Suite 250
 Sacramento, CA 95814
 Attn: _____

To HOSF:

Historic Old Sacramento Foundation
 101 "I" Street
 Sacramento, CA 95814
 Attn: _____

6. **INSURANCE REQUIREMENTS.** During the entire term of this Agreement, HOSF shall maintain the insurance coverage described in this Section 6. It is understood and agreed by the HOSF that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the HOSF in connection with this Agreement.
 - A. Minimum Scope & Limits of Insurance Coverage. HOSF shall maintain commercial general liability insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
 - B. City as Additional Insured. The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of HOSF, products and completed operations of HOSF, and premises owned, leased or used by HOSF.
 - C. Acceptability of Insurance. Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 5 must be declared to and approved by the City's Risk Management Division in writing prior to execution of this Agreement.

D. Other Insurance Provisions. The policy is to contain, or be endorsed to contain, the following provisions:

(1) HOSF's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of HOSF's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.

(3) Coverage shall state that HOSF's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) City will be provided with ten (10) days written notice of cancellation or material change in the policy language or terms.

E. Verification of Coverage.

(1) HOSF shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative named in Section 5. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The City may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The City may cancel the Agreement if the insurance is canceled or HOSF otherwise ceases to be insured as required herein.

7. **INDEMNITY:** HOSF shall fully indemnify and save harmless City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including but not limited to, any fees, attorney fees and/or costs incurred by City's staff attorneys or outside attorneys and any fees and provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of HOSF, its subcontractors or agents, or their respective officers and employees, in connection with the Program, whether or not the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by HOSF, and whether or not such Liabilities are litigated, settled or reduced to judgment.

8. **OBLIGATION TO DEFEND:** HOSF shall, upon City's request, defend at HOSF's sole cost any action, claim, suit, cause of action or portion thereof which asserts or

alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of HOSF, its subcontractors or agents, or their respective officers and employees, in connection with the Program, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

9. **NONDISCRIMINATION.** In conducting Underground Tours, employing personnel, or in any other respect of this Agreement, HOSF shall not employ discriminatory practices on the basis of race, color, sex, age, religion, sexual orientation, national origin or ancestry, or physical or mental disability.
10. **ACCOUNTING RECORDS OF HOSF.** During the term of this Agreement and for a period of three (3) years thereafter, HOSF shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of HOSF's revenues and expenses related to the Program, in accordance with generally accepted accounting principles, and shall keep and make such records available for inspection and audit by representatives of the City.
11. **REPORTING.** During the term of this Agreement, HOSF shall provide quarterly and annual financial reports to the City that include the number of Underground Tours given and breakdown of customer type (adult, child, group) by month, and Program gross revenues and expenses by month, in accordance with generally accepted accounting principles.
12. **POSSESSORY INTEREST TAX:** This Agreement may create a possessory interest subject to property taxation. Licensee shall be subject to payment of property taxes levied on the possessory interest by the County of Sacramento. State law requires a public entity renting or leasing its property to a private party to notify the private party about the potential tax. If imposed, the interest tax is equal to 1% of the assessed value.
13. **NO JOINT VENTURE:** This Agreement shall not create between the Parties a joint venture, partnership, or any other relationship of association.
14. **NO GRANT OF AGENCY:** Except as the Parties may specify in writing, neither Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent. Neither Party shall have any authority, express or implied, pursuant to this Agreement, to bind the other Party to any obligation whatsoever.
15. **LICENSES & PERMITS:** HOSF represents and warrants to City that HOSF shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any applicable licenses, permits, or approvals that are legally required for HOSF to perform its obligations under this Agreement.
16. **ASSIGNMENT PROHIBITED:** No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of

any right or obligation pursuant to this Agreement shall be void and of no effect.

17. DEFAULT AND TERMINATION.

A. The following events shall be "Events of Default" under this Agreement:

1. The failure of HOSF to pay any amounts owed under the Loan Agreement when due.
2. The failure of HOSF to offer or conduct the Program as required by this Agreement, unless such performance is made impossible through no fault of HOSF.
3. The failure of HOSF to keep, perform, or observe any promise, covenant, condition, and agreement set forth in this Agreement on its part to be so kept, performed, or observed within thirty (30) days or such lesser time as may be reasonable after receipt of written notice of default from the City.
4. The abandonment or discontinuance of the Program by HOSF without the written consent of the City.

B. Upon the occurrence of any one or more of the "Events of Default," the City shall have the right to terminate this Agreement. Upon such termination, any amounts owed to the City under the Loan Agreement shall be accelerated and become immediately due and payable without further notice or demand. Election by the City to terminate this Agreement shall not prejudice any rights or claims the City may have for sums remaining due it or for damages or pursuing such other remedies as may be available to the City by law or equity, all remedies of the City to be cumulative and not alternative.

18. **WAIVER.** Neither City acceptance of any service performed by HOSF, nor any waiver of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

19. **ENFORCEMENT OF AGREEMENT.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

20. **ENTIRE AGREEMENT.** This document contains the entire agreement between the Parties concerning the Program and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No

alteration to the terms of this Agreement shall be valid unless approved in writing by HOSF and by City, in accordance with applicable provisions of the Sacramento Municipal Code.

21. **SUCCESSORS.** This Agreement shall bind the successors of City and HOSF in the same manner as if they were expressly named.
22. **AUTHORITY.** The person signing this Agreement for HOSF hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of HOSF and to bind HOSF to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF SACRAMENTO
A Municipal Corporation

For: Ray Kerridge,
City Manager

ATTEST:

City Clerk

HISTORIC OLD SACRAMENTO
FOUNDATION, a non-profit corporation

Catherine J. Taylor

Chairperson

APPROVED AS TO FORM

Angie Casagrande

Sr. Deputy City Attorney