



# City of Sacramento City Council

16

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 3/27/2012

**Report Type:** Consent

**Title:** McKinley Park Rose Garden License Agreement

**Report ID:** 2012-00272

**Location:** 3330 McKinley Boulevard, District 3

**Recommendation:** Pass a motion authorizing the City Manager, or his designee, to execute a License Agreement with the Friends of East Sacramento for the exclusive operation, maintenance, and programming of the McKinley Park Rose Garden

**Contact:** James L. Combs, Director, (916) 808-8526, Department of Parks and Recreation

**Presenter:** None

**Department:** Parks & Recreation Department

**Division:** Fiscal And Management Services

**Dept ID:** 19001011

## **Attachments:**

---

1-Description/Analysis

2-License Agreement with Friends of East Sacramento

---

## **City Attorney Review**

Approved as to Form  
Sheryl N. Patterson  
3/14/2012 2:01:37 PM

## **City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
3/8/2012 10:58:17 AM

## **Approvals/Acknowledgements**

Department Director or Designee: Jim Combs - 3/9/2012 1:08:09 PM

## Description/Analysis

**Issue:** With significant challenges to the General Fund, the Department of Parks and Recreation (DPR) has faced a severe budget shortfall and as a result had to reduce operations and maintenance of the McKinley Park Rose Garden. The McKinley Park Rose Garden has been operated by the City since 1928 and has provided a place for the residents in the community to gather for social events or to leisurely enjoy the more than 1,000 rose bushes, tree roses, and blooming annuals the garden offers. The City is currently undertaking some renovations of the garden to improve the irrigation system, add accessibility features such as new walkways, benches, and parking, and a new entry sign. This work is to be completed by early April and rental events are planned to start soon thereafter.

Friends of East Sacramento (FOES) is a charitable non-profit community organization which benefits its members and the East Sacramento community through activities such as park improvements and community volunteerism, with a focus on parks, recreation and enrichment activities. FOES has stepped forward and is willing to assume responsibility of the rose garden operations, with the goal of achieving a higher level of maintenance and thereby improving the public's enjoyment and use of the garden, which will benefit the community.

FOES will implement a new method of fundraising to support ongoing maintenance by allowing the public to sponsor a bed or section of the garden for one year. Additionally, to beautify the garden FOES will improve signage with a new cohesive design. Given this change, the individual wood posts with plaques identifying a variety of rose will not be re-installed this Spring. Nearly all these plaques were donated in the late 1980's through 1994. Park and Recreation staff and Gifts to Share, Inc. outreached to past donors in 2009 regarding the improvement project. Past donors who wished to be kept apprised of the project will be contacted regarding this change. Every effort will be made to accommodate previous commitments. FOES will offer them a complimentary one year sponsorship with a new plaque, and will be encouraged to become sponsors thereafter.

**Policy Considerations:** The operation of the McKinley Rose Garden by the FOES is consistent with City Council priorities of preserving and enhancing neighborhoods through strong neighborhood associations and leadership

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This recommendation to allow for FOES to maintain an existing garden and undertake minor improvements is exempt from the California Environmental Quality Act (CEQA) according to Section 15304 of the CEQA Guidelines.

**Sustainability:** FOES' efforts will help insure that the garden is well-maintained to benefit the community on a long-term basis.

**Commission/Committee Action:** The Parks and Recreation Commission was advised of this proposed action at its March 1, 2012 meeting.

**Rationale for Recommendation:** This report recommends executing a License Agreement to grant to FOES the exclusive right to manage and maintain the McKinley Rose Garden on a long-term basis for the following reasons:

- FOES efforts to seek donations and volunteer assistance will allow for the McKinley Park Rose Garden plantings to be maintained at a higher level of care, thereby enhancing the beautification of the rose garden and endowing a great asset to the community.
- In addition to routine landscape maintenance, FOES intends to also undertake some improvements, such as a gazebo, fountain and adding new plantings, based on the level of donations and event rental income.
- FOES will assume responsibility for marketing and managing all future events at the garden, including assuming responsibility for all currently booked events.
- The higher level of maintenance of the rose garden by FOES contractors and volunteers will create a more attractive garden, such that social event rentals may increase along with use by the general public.
- Revenue from the rental reservations and donations, and the use of volunteers will provide necessary funding to support the on-going maintenance needs of the rose garden at a higher level for the benefit of the public.

**Financial Considerations:** The term of the License Agreement will be for an initial term of five (5) years, with three options for FOES to extend the term for additional five (5) year periods, for a total term of 20 years. FOES indicates that they need a long-term agreement to enable them to make commitments to donors that their contributions will result in lasting improvements of the garden

based on a higher level of maintenance and care. The City will continue to pay for the water and electricity for the garden irrigation system, but will no longer receive event rental income to off-set such costs. DPR will absorb this minimal loss of the reservation revenues (approximately \$5,000 annually) in consideration of the garden maintenance and event management services to be provided by FOES.

**Emerging Small Business Development (ESBD):** None with this item.

**LICENSE AGREEMENT**  
[McKinley Park Rose Garden]

THIS LICENSE AGREEMENT (this "**Agreement**") is dated for reference purposes as of \_\_\_\_\_, 2012, by and between **FRIENDS OF EAST SACRAMENTO**, a California nonprofit corporation ("**Licensee**"), and **CITY OF SACRAMENTO**, a municipal corporation (the "**City**"), with reference to the following facts:

**RECITALS**

A. The City owns that certain real property located in the City of Sacramento, County of Sacramento, State of California, commonly known as McKinley Park, bearing Assessor's Parcel No. 003-0010-002, (the "**Property**").

B. On the terms and conditions and for the purposes set forth in this Agreement, Licensee desires to license from the City and City desires to license to Licensee that portion of the Property known as the Frederick N. Evans Memorial Rose Garden (aka McKinley Park Rose Garden) as more particularly depicted or described on Exhibit A attached hereto (the "**License Area**" or the "**Garden**"). City is undertaking renovation of the Garden as shown in Exhibit B attached hereto (the "**City Improvements**"), which City Improvements are expected to be completed on or about April 7, 2012. Licensee intends to undertake improvements of the License Area after completion of the City Improvements, such that the Garden will not be available for rental until after April 27, 2012.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises herein, the parties agree as follows:

1. **Grant of License**. The City hereby grants to Licensee a license ("**License**") with respect to the License Area as follows:

1.1 Subject to the reserved rights set out in Sections 1.1.4 and 1.3 hereof, an exclusive license to repair, remove, restore, install, maintain and improve the License Area as a rose garden, with the right to plant additional roses and other perennial and annual flowers, grasses, bushes and trees (the "**Plantings**"), along with related complementary facilities which includes, without limitation, irrigation facilities, benches, signs, walkways, planters, gazebo, and fountain generally consistent with the historical use of the Garden (collectively "**Landscape Improvements**"). With respect thereto:

1.1.1 Any new Plantings and Landscape Improvements undertaken by Licensee shall be subject to City's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. City's approval shall not be required for replacement or addition of Plantings within the License Area in the ordinary course of maintenance of the Garden, provided that new or replacement materials are generally equivalent to or compatible with those existing in the Garden at the time of planting.

1.1.2 In consideration for granting Licensee the exclusive license described in Section 1.2 hereof, Licensee shall be obligated to perform the maintenance of the License Area as described in Section 4.2.2 hereof.

1.1.3 Licensee's rights and obligations under this Section 1.1 shall commence on the Commencement Date, which is planned for April 7, 2012.

1.1.4 City retains the right to access the License Area for inspection and to undertake improvements, repairs and maintenance of the License Area, as allowed or required by this Agreement, after providing prior notice to Licensee of the scope and schedule of such work, which work (a) shall not damage the landscaping and improvements then existing in the License Area or such damage shall be expeditiously repaired, and (b) such work shall be scheduled to avoid conflicts with use of the Garden for Daily Rentals.

1.2 An exclusive license to rent the License Area to third parties for special events (e.g., weddings, receptions, photographic sittings, etc.) on a day-use basis ("**Daily Rentals**") and to make reservations for such Daily Rentals of the License Area for use on and after the Commencement Date, or such later date as mutually agreed upon by the parties. Upon and after execution of this Agreement, City shall promptly refer to Licensee all inquiries from third parties regarding Daily Rentals of the License Area and reservations for same. The City shall assign to Licensee all reservations and bookings for Daily Rentals made by or for the City and scheduled to make use of the Garden on or after the Commencement Date, including all those bookings and reservations described or listed in Exhibit C attached hereto. City shall remit the rental agreements and all

payments collected pursuant to such agreements in connection with such rentals to Licensee on the earlier of thirty (30) days from the execution of this Agreement or ten (10) days prior to the date the Garden is to be used pursuant to such reservation.

1.2.1 Licensee may determine the rates for such Daily Rentals to maximize the use of the License Area for special events and shall make reservations on a "first come, first served" basis. Licensee shall not discriminate against any member of the public on the ground of their race, color, religion, sex, ancestry, national origin, age, disability, medical condition, marital status, or sexual orientation with regard to the rental of the License Area. Licensee shall have the right to keep all fees and rental income generated from Daily Rentals of the License Area (collectively, "Rental Revenues"), and shall use such Rental Revenues to fund Licensee's costs for management, marketing, maintenance, and improvement of the License Area ("Operating Costs"). If the Rental Revenues in any given year exceed the Operating Costs incurred by Licensee for such year, then Licensee shall use such excess revenues for purposes that (a) directly benefit McKinley Park and/or its related facilities and (b) are reasonably approved in advance in writing by the City.

1.3 City retains a non-exclusive license for the public to enter and use the License Area when it is not otherwise closed to the public for Daily Rental events or when Licensee is performing maintenance and repairs. The parties acknowledge and agree that the License Area is located within a public park owned by the City and the License Area is intended to remain open and accessible to the public at all times unless otherwise determined by the City or when such public access would conflict with Licensee's rights as described above. Licensee agrees that in scheduling Daily Rentals, the License Area shall be open to the public for some period of time each day between sunrise and sunset. To minimize conflicts between user groups, Licensee shall also use reasonable efforts to avoid scheduling Daily Rentals to occur at the same times when concerts or other large group activities within McKinley Park sponsored by the City are occurring in a location adjacent to the License Area to minimize conflicts between user groups. City will provide Licensee with a schedule of such events in advance on a quarterly basis during the Term of this Agreement.

2. License Fees. There shall be no fee(s) assessed to Licensee by the City for the License described herein or for Licensee's use of the License Area other than satisfaction by Licensee of the terms and conditions of this Agreement. The City acknowledges and agrees that Licensee's maintenance and repair obligations under this Agreement constitute good and valuable consideration to the City for the granting of this License.

3. Term.

3.1 Initial Term. The initial term of the License and this Agreement (the "Term") shall commence on the date that the City completes the City Improvements at the License Area described below, but in no event later than May 1, 2012 (the "Commencement Date"), and shall expire five (5) years thereafter (the "Expiration Date").

3.2 Extension Terms. Licensee shall have the right and option (each, an "Extension Option" and collectively, the "Extension Options") to extend the Term on up to three (3) occasions for periods of five (5) years each, each of which additional terms (each an "Extension Term") shall commence on the day following the current Expiration Date (or Extension Term Expiration Date, as applicable) and expire five (5) years thereafter ("Extension Term Expiration Date"). Licensee may exercise each of its Extension Options under this Section 3.2 only by giving the City written notice of such exercise not later than thirty (30) calendar days prior to the current Expiration Date (or Extension Term Expiration Date, as applicable) and only if Licensee is not in default under this Agreement as of the date of Licensee's exercise. If Licensee fails to exercise its Extension Option in accordance with this Section 3.2, then such right shall terminate. If Licensee does exercise such Extension Option in accordance with this Section 3.2, then the License Term shall be extended as provided herein subject to the agreements, covenants, conditions and provisions set forth in this Agreement.

3.3 Early Termination.

3.3.1 Beginning in 2013, Licensee shall have the right and option to terminate this Agreement and the Term effective on the last day (December 31) of each calendar year during the Term provided that Licensee delivers to the City written notice of such termination on or before September 30 of such year. If Licensee timely delivers such early termination notice to the City, then this Agreement and the Term shall terminate and expire as of the next occurring December 31. If Licensee does not timely deliver such early termination notice to the City, then this Agreement shall continue in full force and effect until proper termination notice is given.

3.3.2 The parties acknowledge that Licensee's ability to perform its obligations under this Agreement for the first two (2) years of the Term is made possible in substantial part by one or more initial donations to Licensee totaling at least Fifty Thousand Dollars (\$50,000.00) (the "Initial Donations"). If Licensee does not receive the Initial Donations within sixty (60) days after the Commencement Date, then Licensee shall have the right to promptly terminate this Agreement upon written notice to the City.

3.3.3 In the event that this License and Agreement is terminated as set forth in the Sections 3.3.1 and 3.3.2, or if Licensee does not exercise an Extension Option under Section 3.2, Licensee shall promptly refer to City all inquiries from third parties regarding Daily Rentals of the License Area and reservations for same, and Licensee shall assign to City all reservations and bookings for Daily Rentals and remit to City the rental agreements and all payments collected pursuant to such agreements which are to occur after the termination date.

#### 4. Condition of License Area.

##### 4.1 City Improvements and Maintenance.

4.1.1 The City at its sole cost and expense is currently undertaking certain improvements to the License Area as described in Exhibit B attached hereto (the "City Improvements"). The City agrees to use good faith and due diligence to complete said City Improvements in accordance with the terms of its construction contract on or before April 7, 2012, or as soon as reasonably possible thereafter. The City shall provide Licensee with written notice promptly following completion of the City Improvements. Licensee hereby requests that the City cause all temporary construction fencing used in connection with the City Improvements to remain in place at the License Area until April 19, 2012, so that Licensee may benefit from the same during installation of Licensee's Improvements within the License Area. The City shall cause all such temporary construction fencing to remain in place until April 19, 2012, provided that (a) Licensee shall pay or reimburse the City for all costs incurred by the City to extend the term of its fencing contract (e.g., costs for increased days of fence rental, and excluding any costs of fence removal), and (b) the City's contractor is willing to execute the change order to maintain the fencing for the specified extended term.

4.1.2 Once the City has completed the City Improvements, the City shall have no obligation to Licensee during the Term to repair or maintain the License Area except for the following: (a) the City shall repair any portion of the License Area damaged by the negligence or willful misconduct of the City or its authorized agents or representatives; (b) the City shall retain responsibility for emptying trash receptacles which are located in the License Area in accordance with City's schedule; (c) the City shall repair lighting fixtures which are located in or immediately adjacent to the License Area; (d) the City shall maintain and repair the underground water distribution pipes serving the License Area's irrigation system shown on Exhibit B attached hereto, and (e) the City shall maintain all other underground irrigation facilities if and to the extent under warranty and/or damaged by the City or its authorized agents or representatives. Notwithstanding the foregoing, Licensee shall be responsible for removed all trash placed on the License Area by Daily Rentals to the extent exceeding the capacity of City trash receptacles and shall endeavor to promptly empty City trash receptacles if and to the extent the same are filled to capacity by Daily Rentals and the City's regular weekly trash pick-up will not occur the following day.

##### 4.2 Licensee Maintenance and Improvements.

4.2.1 Licensee shall accept the License Area AS-IS, WHERE-IS, WITH ALL FAULTS, in its then current condition on the day following completion of all City Improvements.

4.2.2 Licensee at its sole cost and expense shall (a) maintain the License Area in condition equal to or better than that delivered to Licensee on the Commencement Date, reasonable wear and tear and those items described in Section 4.1.2 excepted, including without limitation the irrigation system (i.e., irrigation clock, lateral irrigation lines, and sprinkler heads) and all improvements existing as of the Commencement Date; (b) use good faith to remove or cover any graffiti or similar vandal markings placed on the License Area during the Term; (c) cause the mowing, fertilizing, trimming, replanting, re-staking, and weeding of the existing landscaping and any Plantings installed by Licensee; and (d) maintain and repair all Landscape Improvements installed by Licensee. All maintenance work on the License Area performed by Licensee and its agents, contractors and volunteers shall be at no cost or liability to City and shall be performed in a workmanlike manner and consistent with all relevant laws and regulations. All reasonable precautions shall be exercised by Licensee and its agents, contractors and volunteers when undertaking the maintenance work to prevent any damages or injuries to persons or property. If any damages occur inadvertently to the landscaping, irrigation systems or other improvements in the License Area from Licensee's maintenance work, or if Licensee discovers any conditions in the License Area which may present a safety or health hazard, Licensee shall promptly report such damage and hazardous conditions to City.

4.2.3 Licensee shall also be liable for the costs of disposal of green waste generated from landscape maintenance of the License Area.

4.2.4 Licensee shall have the right, but not the obligation, to replace, restore, install, and improve the License Area from time to time with Plantings and Landscape Improvements at Licensee's sole cost and expense, subject to the following: (a) Licensee shall give the City at least ten (10) days prior written notice before making any changes or additions to the nature or configuration of the License Area after completion of the City Improvements and Licensee's initial Plantings, and (b) City's prior written consent shall be required before Licensee undertakes any such changes or additions, which consent shall not be unreasonably withheld, conditioned or delayed. Licensee shall not remove any existing accessible benches, memorial benches, or memorial plaques located on memorial benches in the License Area as of the Commencement Date. For purposes hereof, "memorial benches" are those benches to which a memorial plaque or sign is affixed on or next to the bench in honor of a donor or its family or friends. During construction and/or placement of any Landscape Improvements, Licensee may construct and/or place a temporary fence at any location on the License Area to protect the same from the public and vice versa. Without limiting the foregoing, Licensee shall not need consent from the City to add, replant and/or replace Plantings within the License Area in the ordinary course of maintenance of the Garden, provided that any new or replacement materials are generally equivalent to or compatible with those existing in the Garden at the time of planting.

4.2.5 If Licensee hires third parties to perform maintenance or improvement work on the License Area, Licensee shall insure that such entity maintains worker compensation insurance and require such party to name City as an additional insured on any general liability and auto insurance policies maintained by such party before performing any work on the License Area. Licensee shall pay in full all persons who perform labor or provide materials for maintenance work on the License Area and shall not permit any mechanics' or material men's liens of any kind or nature to be enforced against any property of City for such work performed. Licensee shall indemnify and hold harmless City from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or arising out of such work done, labor performed, or materials furnished for Licensee for the work performed on City's property as permitted under this Agreement.

4.2.6 Licensee acknowledges that the City formerly had a program by which, for a small donation, donors could have plaques installed next to a plant in the Garden with information about the plant species ("**plant plaques**"). Licensee may remove and shall have no obligation to reinstall any plant plaques, provided that (a) Licensee shall deliver to City any plant plaques removed by Licensee and City shall hold and store such plant plaques for a period determined by the City, (b) upon the written request of Licensee made by any recent donor to the City's plant plaque (Gifts to Share) program whose plant plaque may have been removed, Licensee shall use its best efforts to accommodate and properly recognize such donor in Licensee's adopt-a garden annual fundraising campaign which is established to help pay the costs to maintain the garden.

## 5. Use of License Area.

5.1 Licensee shall have the right to make all reasonable use of the License Area during the term of this License as set forth in Section 1 of this Agreement, provided that: (a) in no event shall Licensee construct or place any temporary, permanent (e.g., more than seven days), or fixed signage, or any advertising signage, on or in the License Area without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, (b) in no event shall Licensee cause any Hazardous Materials (as defined below) to be placed, introduced, dumped, stored, disposed of, discharged, used or brought in, upon, under or over the License Area, (c) Licensee conducts all of Licensee's activities in the License Area in compliance with all applicable federal, state, local laws, permits and regulations, including without limitation all City sign regulations; (d) Licensee shall keep the License Area free and clear of any liens caused by any of the activities conducted upon or use of the License Area by Licensee pursuant to this Agreement, and (e) Licensee shall use due diligence and reasonable efforts not to damage the License Area in connection with its activities thereon. Without limitation, and provided that the same are in compliance with all applicable laws and sign regulations, Licensee shall not need the City's prior consent to place signage on the License Area which (i) are for directional, way-finding or public safety purposes, (ii) are consistent with any sign templates pre-approved by the City, or (iii) provide information regarding Plantings which signs are located immediately adjacent to a plant and substantially the same in size and content regarding the plant species as the previous plant plaques.

5.2 For purposes of this Agreement, "**Hazardous Materials**" shall mean any substances or materials classified as hazardous materials, hazardous substances, hazardous waste or toxic waste under any federal, state or local statute, regulation or ordinance, including but not limited to any petroleum products and other chemicals and solvents. Licensee, at Licensee's sole cost and expense, shall conduct any and all investigations

and remediation required to remove any Hazardous Materials released on or about the License Area in violation of this Agreement or applicable law.

5.3 Notwithstanding anything to the contrary, and subject to priority use by occasional Daily Rentals, Licensee shall at all times keep and maintain the License Area open to the public during normal hours for McKinley Park and shall allow the public to use and enjoy the License Area as a public amenity.

5.4 The City shall cause to be provided and supplied to Licensee at the sole cost and expense of the City and without reimbursement from Licensee (a) all water necessary and used by Licensee at the License Area in connection with Licensee's rights and obligations under this Agreement, and (b) all electricity necessary and used by Licensee for operation of City maintained irrigation facilities at the License Area and lighting for signs at the License Area, if any. At Licensee's sole cost and expense, Licensee shall provide and pay for all other utilities needed by Licensee at the License Area.

## 6. Default and Remedies.

6.1 Licensee Events of Default. The occurrence of any of the following shall constitute a default ("**Event of Default**") by Licensee under this Agreement: (a) failure to pay any sum due under this Agreement on the date the same first becomes due, if such failure shall continue for more than ten (10) days after written notice from the City to Licensee; or (b) failure of Licensee to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice has been given to Licensee; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, then Licensee shall not be in default under this Agreement if Licensee commences to cure the failure within the thirty (30) day period and diligently and in good faith continues to cure the failure thereafter.

6.2 Remedies. If Licensee commits an Event of Default, then the City shall have all remedies available at law and/or equity in connection with such Event of Default, including without limitation the right to terminate this Agreement upon written notice to Licensee.

6.3 Default By City. The City shall be in default of this Agreement if it fails or refuses to perform any provision of this Agreement that the City is obligated to perform and the failure to perform is not cured within thirty (30) days after written notice of default has been given by Licensee to the City. If the default cannot reasonably be cured within thirty (30) days, then the City shall not be in default of this Agreement if the City commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

## 7. Insurance and Indemnity.

7.1 Insurance. Licensee shall procure at its sole cost and expense and keep in effect at all times during the Term of this Agreement, Commercial General Liability Insurance applicable to activities on the License Area by the Licensee. Such coverage shall have a limit of liability of at least Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Such insurance policy shall be written on an occurrence form to apply to all bodily injury, property damage or personal injury damage during the Term and during any activities on the Property and/or License Area and shall identify the City as an additional insured. Prior to Licensee entering onto the License Area pursuant to this Agreement, Licensee shall deliver to the City a certificate of insurance or copy of an appropriate insurance policy evidencing the coverage required by this Section 7.1.

7.2 Indemnity By Licensee. Licensee shall indemnify, defend and hold the City harmless from and against any and all claims, demands, actions, damages, liability and expenses (including reasonable attorneys' fees and costs of investigation with respect to any claim, demand or action) ("**Claims**") which arise from (a) access to or presence upon or under the License Area by Licensee (but specifically excluding without limitation members of the public and Daily Rentals) pursuant to this Agreement; (b) any damage to the License Area arising from Licensee's exercise of the rights granted under this Agreement; (c) any breach of this Agreement by Licensee; (d) the negligence of Licensee; or (e) any and all liens resulting from acts or omissions by Licensee in connection with activities on or from the License Area pursuant to this Agreement.

7.3 Indemnity By City. The City shall (a) indemnify, defend and hold Licensee harmless from and against any and all Claims which arise from injury or damage to persons or property caused by the sole acts or omissions of City or its authorized representatives (but specifically excluding without limitation members of the public and Daily Rentals); (b) indemnify Licensee's for its loss of income from Daily Rentals that are cancelled due to the improper acts of City employees or its authorized representatives; or (c) indemnify Licensee for damages to Plantings and Landscape Improvements installed by Licensee due to the negligence or misconduct of City employees or its authorized representatives.

8. Successors and Assigns.

8.1 This License is subject to all valid and existing licenses, easements, leases, reservations and conditions affecting the Property and the License Area.

8.2 The License and this Agreement may only be assigned or transferred by Licensee to a non-profit community based organization and with the prior written consent of the City, which consent may not be unreasonably withheld, conditioned or delayed; provided however that Licensee shall not need consent from (or notice to) the City in connection with any Daily Rentals of the License Area. The License and this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.

9. Acknowledgements.

9.1 The City acknowledges that Licensee is a nonprofit organization and that Licensee will solicit for and accept donations to fund Licensee's operations under this Agreement. Some or all of such donations may be earmarked for certain or specific operations at or about the License Area (e.g., for new plantings, for a gazebo, for general maintenance, for bench restoration, etc.). Licensee intends to respect said earmarks to the greatest extent possible.

9.2 Licensee acknowledges that the License Area is part of a public park and that the City desires and requires that the License Area be kept open and available for public use and access.

9.3 Licensee hereby recognizes the title and interest of the City in and to the Property and the License Area, and agrees never to assail or resist said title or interest therein.

9.4 The parties acknowledge that City operates a recreational program in the Tiny Tot building which is located adjacent to the License Area which is not a part of the License Area, and Landscape Improvements to the Garden made by Licensee may enhance the value of the Tiny Tot building. If and to the extent that the City determines to lease the Tiny Tot building for commercial uses to third parties and/or to accept bids for same, then the City shall notify Licensee of same and shall receive, consider and negotiate in good faith any proposals or bids from Licensee with respect to same. In addition, and without limiting the foregoing, City shall notify Licensee in writing if and to the extent that the City plans to materially change the use of or abandon use of the Tiny Tot Building. The irrigation control system for the License Area is located within the Tiny Tot building and City agrees to maintain electricity for that system and allow Licensee to access the building to adjust the irrigation timing or to replace the control system on an as-needed basis.

9.5 Any consents or approvals which Licensee is required to obtain from the City pursuant to this Agreement shall be deemed given if requested from and provided in writing by the City Director of Parks and Recreation or his designee.

10. General Provisions.

10.1 Notices. All notices, consents, approvals and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made (a) upon delivery if hand delivered; (b) one (1) day after delivery to any overnight courier service, fee prepaid; or (c) three (3) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case addressed as follows:

To The City: City of Sacramento, Parks Department  
Attn: Shannon D. Brown  
5730 24<sup>th</sup> Street, Building 3  
Sacramento, CA 95822  
Phone: (916) 808-4070

To Licensee: Friends of East Sacramento  
Attn: Cecily Hastings  
3104 "O" Street #222  
Sacramento, CA 95816  
Fax: (916) 443-5078

Any party may change its address for purposes of this Agreement by giving written notice to the other party as provided in this Paragraph 10.1.

10.2 Attorneys' Fees. If either party to this Agreement commences a proceeding or action against the other party arising out of or in connection with this Agreement, whether in tort or otherwise, then the prevailing party shall be entitled to recover the party's reasonable attorneys' fees and costs, including those attorneys' fees and costs of suit incurred on appeal. For purposes of this Agreement, the "prevailing party" shall be that party which recovers substantially the relief sought by the party, whether by judgment, settlement or otherwise, in connection with any such action or proceeding.

10.3 This Agreement may be amended only by means of a writing signed by all parties hereto. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, discussions and understandings, whether oral or written.

10.4 Time is of the essence in connection with this Agreement. Paragraph headings and captions in this Agreement are for convenience only. This Agreement may be executed in one or more counterparts. Facsimile and PDF (portable document format) signatures on this Agreement shall be binding as if original.

10.5 It is understood and agreed that each party is an independent corporation and that this Agreement shall not create a relationship between City and Licensee or its individual members of employer-employee, joint venture, partnership, or any other relationship of association. The employees of Licensee and its agents and contractors shall not be entitled to any benefits payable to employees of City. No party shall have the authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent, nor bind the other party to any obligations whatsoever.

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

"Licensee"

FRIENDS OF EAST SACRAMENTO, a California nonprofit corporation

By: Cecily Hastings  
Name: Cecily Hastings  
Its: Co-founder

"City"

THE CITY OF SACRAMENTO, a municipal corporation

By: \_\_\_\_\_  
Name: James L. Combs  
Its: Director of Parks and Recreation  
For: John F. Shirey, City Manager

Attest:

By \_\_\_\_\_  
City Clerk

Approved As To Form:

By \_\_\_\_\_  
Senior Deputy City Attorney

EXHIBIT A  
DEPICTION OF THE LICENSE AREA

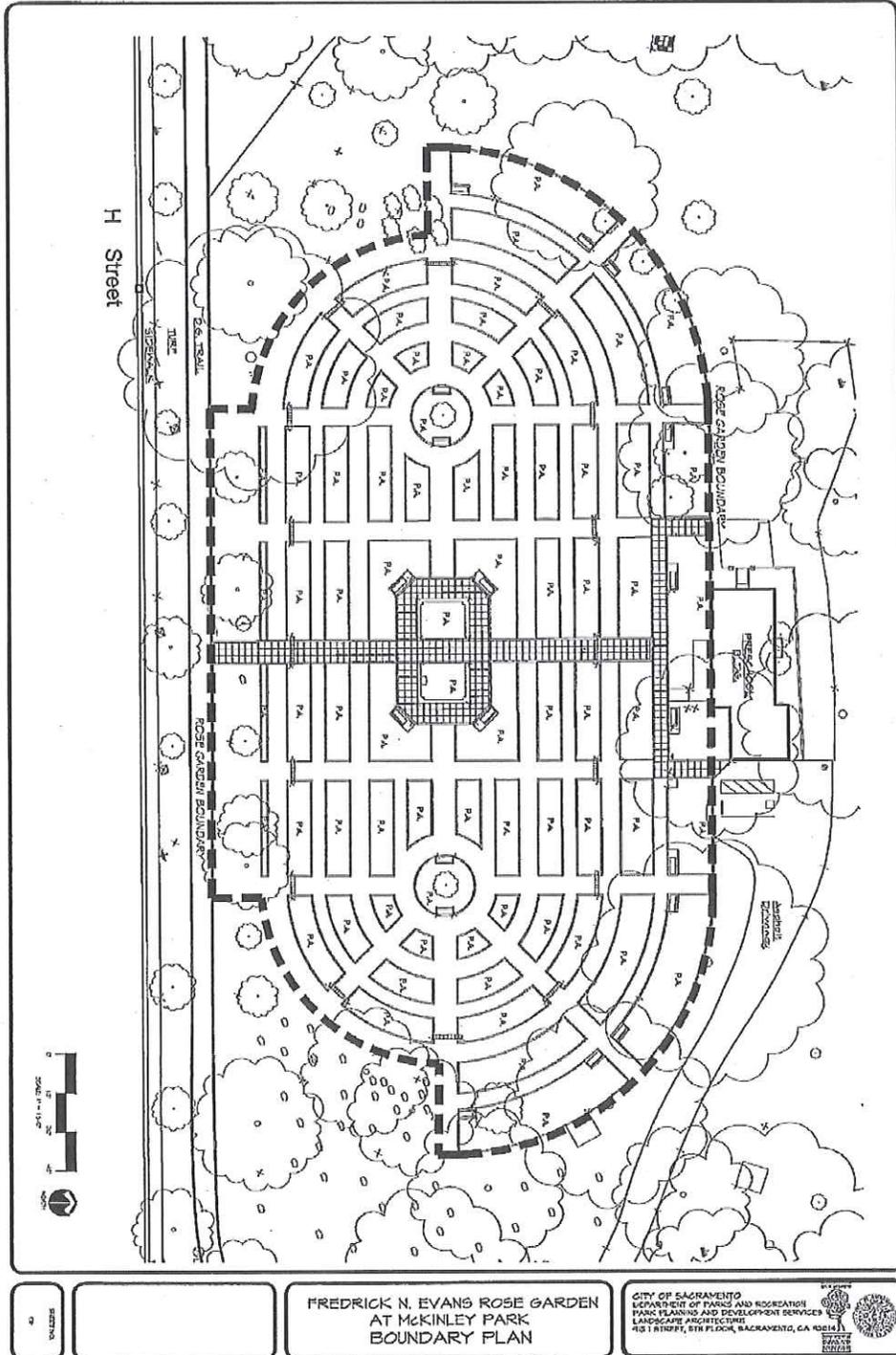


EXHIBIT B  
DESCRIPTION OF CITY IMPROVEMENTS

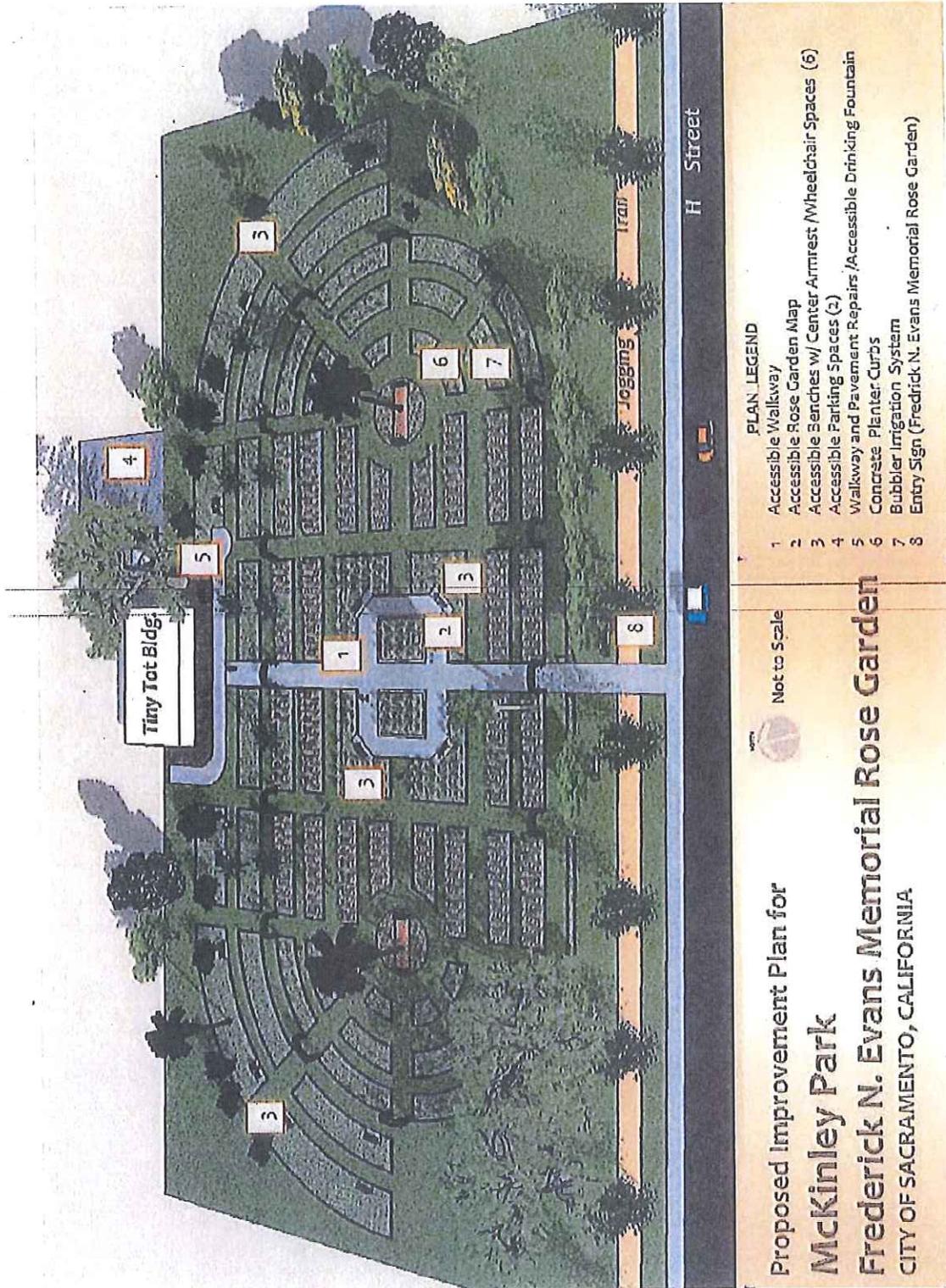


EXHIBIT C  
SCHEDULE OF ASSUMED DAILY RENTALS



Booking Report

Printed: 24 Feb 2012, 11:35 AM  
User: tjackson

Facility Option: Facility  
Date from: Saturday, April 07, 2012  
Facility: Rosa Garden

Facility: Yes  
Date to: Friday, March 01, 2013  
Complex: McKinley Park

Start Date	Start Time	Len. Fee	Rental #	Event Name	Contact Name	Fee Amount
<b>Complex: McKinley Park</b>						
<b>Facility: Rosa Garden</b>						
21 Apr 2012	11:00 AM	3:00 Park Permit-Wedding	436298	Wedding		\$140.00
21 Apr 2012	02:00 PM	3:00 Park Permit-Wedding	391407	Wedding		\$140.00
05 May 2012	11:00 AM	3:00 Park Permit-Wedding	428891	Wedding		\$140.00
05 May 2012	02:00 PM	3:00 Park Permit-Wedding	423642	Wedding		\$140.00
05 May 2012	05:00 PM	3:00 Park Permit-Wedding	428291	WEDDING		\$140.00
12 May 2012	08:00 AM	12:00 No Charge	434541	HOLD FOR TERESA		\$0.00
13 May 2012	08:00 AM	12:00 No Charge	434541	HOLD FOR TERESA		\$0.00
19 May 2012	08:00 AM	3:00 Park Permit-Wedding	433843	Wedding		\$140.00
19 May 2012	12:00 PM	3:00 Park Permit-Wedding	430241	Wedding		\$140.00
20 May 2012	08:00 AM	6:00 No Charge	400742	Stop and Smell the Roses		\$0.00
28 May 2012	02:00 PM	3:00 Park Permit-Wedding	431944	Wedding		\$140.00
27 May 2012	11:00 AM	3:00 Park Permit-Wedding	420097	Wedding Ceremony		\$140.00
02 Jun 2012	08:00 AM	12:00 Park Permit-Wedding	405342	Pops in the Park		\$140.00
09 Jun 2012	11:00 AM	3:00 Park Permit-Wedding	418354	Wedding		\$140.00
09 Jun 2012	02:00 PM	3:00 Park Permit-Wedding	425347	Wedding Ceremony		\$140.00
16 Jun 2012	05:00 PM	3:00 Park Permit-Wedding	432243	Wedding Ceremony		\$140.00
24 Jun 2012	08:00 AM	3:00 Park Permit-Wedding	428742	Wedding		\$140.00
30 Jun 2012	08:00 AM	12:00 Park Permit-Wedding	405342	Pops in the Park		\$140.00
14 Jul 2012	02:00 PM	3:00 Park Permit-Wedding	433091	Wedding		\$140.00
04 Aug 2012	11:00 AM	3:00 Park Permit-Wedding	430694	Wedding		\$140.00
11 Aug 2012	11:00 AM	3:00 Park Permit-Wedding	435142	Wedding Ceremony		\$140.00
18 Aug 2012	02:00 PM	3:00 Park Permit-Wedding	435191	Wedding Ceremony		\$140.00
25 Aug 2012	02:00 PM	3:00 Park Permit-Wedding	430341	Wedding		\$140.00
01 Sep 2012	11:00 AM	3:00 Park Permit-Wedding	420841	Wedding		\$140.00
01 Sep 2012	02:00 PM	3:00 Park Permit-Wedding	420841	Wedding		\$140.00
08 Sep 2012	11:00 AM	3:00 Park Permit-Wedding	432452	Wedding		\$140.00
22 Sep 2012	11:00 AM	3:00 Park Permit-Wedding	418791	Wedding		\$140.00
22 Sep 2012	02:00 PM	3:00 Park Permit-Wedding	426896	Wedding		\$140.00
06 Oct 2012	02:00 PM	3:00 Park Permit-Wedding	432295	Wedding Ceremony		\$140.00
						\$3,640.00
Total for Complex McKinley Park						\$3,640.00