

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SACRAMENTO
AND FAIRYTALE TOWN, INC.
REGARDING A \$500,000 CAPITAL IMPROVEMENT GRANT**

This Memorandum of Understanding ("MOU") is made as of _____ by and between the City of Sacramento, a municipal corporation ("City") and Fairytale Town, Inc., a nonprofit corporation, dba "Friends of Fairytale Town" ("Grantee"). The City and Grantee shall be referred to herein collectively as the "Parties."

On May 23, 2006, the Sacramento City Council authorized the 2006 Community Reinvestment Capital Improvement Program ("CRCIP"). The CRCIP provides for the issuance of Capital Improvement Revenue Bonds ("Bonds") for the funding of various CRCIP community projects to:

- Improve the quality of life for members of the community;
- Ensure future generations enjoy the City as much as the present generation; and
- Support organizations dedicated to the creation of cultural, leisure and educational activities within the City.

Grantee operates and maintains "Fairytale Town" for the benefit of the Sacramento community. The Sacramento City Council has awarded Grantee up to \$500,000.00 from the Bond proceeds for the purpose of making certain improvements to Fairytale Town, hereinafter referred to as the "Project."

In order to achieve the objectives of the Sacramento City Council, ensure fiscal responsibility and accountability in the management of the CRCIP and the Project, the City Council has adopted six policy directives regarding the use of Bond proceeds. These directives state:

1. Preliminary Work: Projects that have not begun preliminary work which may include acquisition, community outreach, environmental, design, etc. within twelve (12) months of July 1, 2006, will be reassessed for continued funding or substitution of other projects.
2. External Funding Sources: If required by City, City bond funds will not be advanced until such time that fifty percent (50%) of the needed external funding is achieved.
3. Grant Funds: Agreements or MOUs with grantee organizations should be put in place to ensure project objectives will be met before funding is awarded.

4. **General Fund Loans:** Loan or Development Agreements with grantee organizations must be put in place prior to award of funding.
5. **Contingency:** Contingency is earmarked for Tier 1 construction projects and should not be reprogrammed to Tier II or other projects until assurance can be made that all Tier I projects have sufficient funding to be completed; and the contingency can be reduced at the time of bond sale of an amount not less than twelve percent (12%) of the Tier I projects that have a contingency, if such reduction is necessary to maintain project funds for all Tier I projects originally approved by City Council. City Council must approve all use of contingency.
6. **Bond Proceeds Management:** The City Treasurer's Office will report back to City Council semi-annually on the availability and programming of investment earnings and the status of projects as they relate to compliance with tax-exempt regulations and Policy Directives, and City Council authorize the use of investment earnings from the 2006 CIRB (excluding the SHRA component) unspent lease revenue bond funds to restore all Tier I projects should interest rates increase prior to the bond issue and a reduction in contingency funds previously described not be sufficient to offset the loss of project funds due to potential interest rate increases.

The Parties enter into this MOU for the purpose of completing the Project in accordance with the directives, objectives and goals of the City as stated herein. Accordingly, and in consideration of the mutual covenants and promises contained herein, **THE PARTIES AGREE AS FOLLOWS:**

1. **Project Description.** Grantee shall replace Fairytale Town perimeter chain-link fence with a wrought iron perimeter fence, resurface and slurry seal Fairytale Town walkways, and other minor physical improvements to the grounds.
2. **Operating Agreement.** The terms of the operating agreement between the City and Grantee, City Agreement No. 97-157, dated October 1, 1997 and the amendments thereto, City Agreement numbers 97-157-2, 97-157-3, and 97-157-4 attached hereto as Exhibit A, are part of this MOU for all purposes. Where the terms of City Agreement No. 97-157 and its amendments conflict with the terms of this MOU, the MOU shall control.
3. **City Funding.** The City agrees to provide up to \$500,000.00 to the Grantee for the cost to construct the Project, or "Project Costs."
 - A. **Project Costs.** Project Costs shall mean and include costs related to all contracts for the construction of the Project, and costs associated with all other contracts for professional and other services necessary,

in the City's judgment, to implement and complete construction, together with all planning and design costs. Project Costs also shall include, but not be limited to, the engineering estimates and the Project elements included therein, construction inspection fees, permit fees, and whichever of the following costs or fees, if any, may be applicable: environmental documentation (whether prepared by outside consultants or City staff), City project administration, plan check and inspection fees.

4. Project Completion. Grantee shall complete the Project by June 30, 2009.

5. Project Approvals.

A. Project Schedule. Grantee shall submit a Project schedule to the Director of the City's Convention, Culture and Leisure Department "Director" no later than December 29, 2006 for review and approval. The schedule shall include all phases of the Project. Grantee shall notify the Director in writing if it cannot meet the Project schedule. The Director will thereafter notify Grantee if submission of a revised schedule is required.

B. Planning, Design and Construction. Grantee shall submit plans for each phase of the Project to the Director for review and approval. Project phases include, but are not limited to, planning, design, and construction. Design and construction plans shall be sufficiently detailed to permit the Director to make fully informed decisions concerning the plans. Construction plans shall be submitted for approval in advance of any construction. The Director's approval of plans pursuant to this section shall not constitute approval of such plans in any manner except as required by this MOU.

C. Competitive Bidding. Formal competitive bidding is required for all contracts with an estimated value of \$100,000 or more. All bid requirements shall be in conformance with the Sacramento City Code. Grantee shall prepare and submit bid documents for the Project to the Director for review and approval.

D. Agreements. All agreements and contracts for the Project between Grantee and any other party shall require the review and approval of the Director.

Construction contracts shall include: (i) provisions mandating compliance with all requirements applicable to the construction of a "public project" under the Sacramento City Code, as well as all other applicable laws and regulations, including without limitation the payment of prevailing wages and compliance with all applicable provisions of the Americans With Disabilities

Act; and (ii) bonding, insurance and indemnity provisions as may be required by the City.

6. **Project Construction.** All work shall be performed in a good and workman-like manner, shall substantially comply with any plans and specifications approved by the City, and shall comply with all applicable governmental permits, laws, ordinances, and regulations. Grantee shall obtain building permits for the Project, if required.
7. **Grantee Reporting Requirements.** Grantee shall submit the following reports to the Director in both written and electronic forms:
 - A. Project budget prior to funding of the Project by the City by December 29, 2006. Thereafter, a monthly Project budget report by the 15th of each month for the preceding month.
 - B. Semi-annual Project income and expense statements in conformance with generally accepted accounting principles due on the first day of January and July of each year.
 - C. Semi-annual Project status reports, including a brief narrative of activities, due on the first day of January and July of each year.
 - D. Final Project status report, including photographs of completed Project and proof of payments, to be submitted within 30 days of Project completion.
8. **Maintenance and Inspection of Records.** Bond funds shall be used for the Project only and for which there shall be a separate accounting by Grantee. During performance of this MOU, and for a period of three (3) years after completing the Project, Grantee shall maintain all accounting and financial records related to the Project and this MOU and shall keep and make such records available for inspection and audit by representatives of the City upon reasonable written notice.
9. **Licenses, Permits, Etc.** Grantee represents and warrants that Grantee has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Grantee to perform the terms of this MOU. Grantee represents and warrants that Grantee shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this MOU any licenses, permits, and approvals that are legally required for Grantee to provide such performance.
10. **Indemnity and Hold Harmless.**
 - A. Indemnity: Grantee shall 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, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to the extent such Liabilities are caused by or arise from any negligent act or omission, recklessness or willful misconduct of Grantee, its contractors, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this MOU, whether or not (i) such Liabilities also are caused in part by the passive negligence of the City, its officers or employees, (ii) the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the Grantee, its contractors, subcontractors or agents, and their respective officers and employees, or (iii) such Liabilities are litigated, settled or reduced to judgment.

- B. Obligation to Defend: Grantee shall, upon City's request, defend at Grantee's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities caused by or arising from any negligent act or omission, recklessness or willful misconduct of Grantee, its contractors, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this MOU, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

- C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section, the existence or acceptance by City of any of the insurance policies or coverages described in this MOU shall not affect or limit any of City's rights under this Section, nor shall the limits of such insurance limit the liability of Grantee hereunder. The provisions of this Section shall survive any expiration or termination of this MOU.

- 11. **Insurance.** During the entire term of this MOU, Grantee shall maintain the insurance coverage described in this Section.

Grantee, at its sole cost and expense and for the full term of this MOU, shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any activities under this MOU.

It is understood and agreed by the Grantee 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 Grantee in connection with this MOU.

- A. Minimum Scope & Limits of Insurance Coverage

- (1) 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.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 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 coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Grantee.

No automobile liability insurance shall be required if Grantee completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this MOU."
_____ (Grantee initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the City by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the Grantee.

No Workers' Compensation insurance shall be required if Grantee completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (Grantee initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the City by selecting the option below:

_____ Professional liability insurance is required and

must be continued for at least _____ year(s) following the performance of the terms of this MOU.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: 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 Grantee, products and completed operations of Grantee, and premises owned, leased or used by Grantee. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the City by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, Grantee'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 Grantee'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 Grantee'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 thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. 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 must be declared to and approved by the City Risk Management Division in writing prior to execution of this MOU.

E. Verification of Coverage

(1) Grantee shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the Director. 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 MOU if the certificates of insurance and endorsements required have not been provided prior to execution of this MOU. The City may withhold payments to Grantee and/or cancel the MOU if the insurance is canceled or Grantee otherwise ceases to be insured as required herein.

F. Consultants and Contractors

Grantee shall require and verify that all consultants, sub-consultants, contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

11. Regulations and Ordinances. Grantee shall, at all times, comply with and abide by all pertinent or applicable regulations and ordinances of the City of Sacramento and County of Sacramento and the laws of the State of California and the United States insofar as the same or any of them are applicable and shall obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein.

12. Equal Employment Opportunity. During the performance of this MOU, Grantee, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance With Regulations: Grantee shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations."

B. Nondiscrimination: Grantee, with regard to the Project, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status,

physical handicap or sexual orientation in selection and retention of consultants, contractors and subcontractors, including procurement of materials and leases of equipment. Grantee shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

- C. Solicitations for Contractors or Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Grantee for work to be performed under any contract or subcontract, including all procurement of materials or equipment, each potential contractor or subcontractor or supplier shall be notified by Grantee of Grantee's obligation under this MOU and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: Grantee shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Grantee is in the exclusive possession of another who fails or refuses to furnish this information, Grantee shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by Grantee with the nondiscrimination provisions of this MOU, the City shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of Bond funds to Grantee until Grantee complies;
 - (2) Cancellation, termination, or suspension of the MOU, in whole or in part.
- F. Incorporation of Provisions: Grantee shall include the provisions of subsections A through E, above, in every contract and subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. Grantee shall take such action with respect to any contract or subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Grantee becomes involved in, or is threatened with, litigation with a contractor, subcontractor or supplier as a result of such direction, Grantee may request City to enter such litigation to protect the interests of City.

13. **Waiver.** Neither City approval of the Project, nor grant of Bond funds for the Project, nor any acceptance by the City of the performance of Grantee, its contractors, subcontractors or agents, and their respective officers and employees

under this MOU, nor any waiver by City of any default, breach or condition precedent, shall be construed as a waiver of any provision of this MOU, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

14. **Severability.** If any portion of this MOU or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this MOU shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Assignment Prohibited.** Grantee shall not assign any right or obligation pursuant to this MOU without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.
16. **No Agency.** Neither party, nor any of its agents, contractors or employees are or shall be considered to be the agents of any other party in connection with the performance of any of act under this MOU.
17. **No Partnership Relationship.** It is understood and agreed that Grantee is an independent organization and that no relationship of employer-employee, partnership or joint venture exists between the Parties hereto for any purpose whatsoever. Except as expressly provided in this MOU, Grantee and Grantee's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor to bind City to any obligations whatsoever. City shall not control the activities of Grantee, and City and City's personnel shall have no authority, express or implied, to act on behalf of Grantee in any capacity whatsoever as an agent, nor to bind Grantee to any obligations whatsoever.
18. **Ownership of Project.** City and Grantee acknowledge that the completed Project will be the property of the City.
19. **Binding Effect.** This MOU shall be binding on the heirs, executors, administrators, successors and assigns of the Parties, subject to the provisions of Section 15, above.
20. **Time of Essence.** Time is expressly declared to be in the essence of this MOU. City shall designate this Project as a Tier 1 project and shall use its best efforts to expedite reviews and Project approvals.
21. **Entire Agreement.** This document contains the entire agreement between the Parties concerning the Project and supersedes whatever oral or written understanding they may have had prior to the execution of this MOU. No alteration to the terms of this MOU shall be valid unless approved in writing by Grantee, and by City, in accordance with applicable provisions of the Sacramento Municipal Code.

22. Specific Performance by Grantee. Because the benefit to be derived by the City from the full performance by Grantee of the terms of this MOU is the development and improvement of community facilities intended to benefit members of the public, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of Bond funds furnished by the City pursuant to the terms of this MOU, Grantee agrees that the return of the Bond funds disbursed under this MOU would be inadequate compensation to the City for any breach of this MOU by Grantee. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach of this MOU by the Grantee shall be the specific performance of this MOU, unless otherwise agreed to by the City.

23. Term; Suspension; Termination.

A. This MOU shall become effective on the date that it is approved by both Parties, and shall continue in effect until both Parties have fully performed their respective obligations under this MOU, unless sooner terminated as provided herein.

B. City shall have the right at any time to temporarily suspend Grantee's performance hereunder, in whole or in part, by giving a written notice of suspension to Grantee. If City gives such notice of suspension, Grantee shall immediately suspend its activities under this MOU, as specified in such notice.

C. City shall have the right to terminate this MOU at any time by giving a written notice of termination to Grantee. If the City terminates this MOU:

(1) Grantee shall, not later than five days after such notice of termination, deliver to City copies of all writings, documents or reports prepared pursuant to this MOU.

(2) Return all Bond funds received from the City within 30 days of the notice of termination.

24. Disputes. The Parties shall attempt to resolve any disputes they may have in good faith, beginning with the Director and Grantee's Project Representative. Should they be unable reach resolution, they shall refer the dispute to City Manager or his designee. Should the Parties be unable to reach resolution, they shall refer the dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon the mediator, the Parties will request appointment of a mediator by the American Arbitration Association. Each party shall pay its own costs and be responsible to pay one-half of the mediator's costs.

25. Party Representatives. The representatives for the Parties with respect to this MOU are:

For Grantee:

Kathryn Flemming, Executive Director
Friends of Fairytale Town
3901 Land Park Drive
Sacramento, California 95822
Telephone: 916-264-7060

For City:

Barbara E. Bonebrake, Director
Convention, Culture & Leisure Department
1030 15th Street, Suite 250
Sacramento, California 95814
Telephone: 916-808-8225
Facsimile: 916-808-7279

- 26. Notices.** All notices and orders that may be given under this MOU may be served by first class mail or in person to City at the Convention, Culture and Leisure Department, 1030 15th Street, Suite 250, Sacramento, California 95814; and to Grantee, dba, Friends of Fairytale Town at 1501 Sutterville Road, Sacramento, California 95822, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.

27. **Authority.** The person signing this MOU for Grantee hereby represents and warrants that he/she is fully authorized to sign this MOU on behalf of Grantee and to bind Grantee to the performance of its obligations hereunder.

CITY OF SACRAMENTO

Grantee: FAIRYTALE TOWN, INC.,
a non-profit corporation

RAY KERRIDGE, City Manager

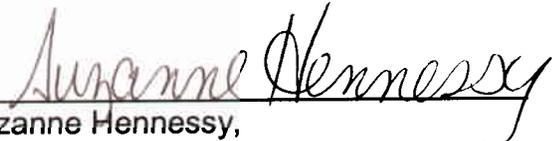


Duffy Segale
PRESIDENT, BOARD OF DIRECTORS

APPROVED AS TO FORM:



Robert Tokunaga,
Supervising Deputy City Attorney



Suzanne Hennessy,
SECRETARY

ATTEST:

CITY CLERK