# CITY OF FULLERTON PARKS AND RECREATION COMMISSION AGENDA

Regular Meeting City Council Chamber Monday, November 8, 2010 6:30 p.m.

Public comment will be allowed on items on this Agenda at the time each item is considered.

Persons addressing the Commission shall be limited to 5 minutes, unless an extension of time is granted by the Chairman, subject to approval of the Commission. When any group of persons wishes to address the Commission, it shall be proper for the Chairman to request that a spokesman be chosen to represent the group.

Public comments will also be allowed on items NOT on the agenda, but within the subject matter jurisdiction of the Commission, prior to approval of the Minutes, and will be limited to thirty minutes and not to exceed five minutes per person. No one will be heard twice. Any public comments not received at the beginning of the session may be heard at the end of the session. NO action may be taken on off-agenda items, except as provided by law.

CALL TO ORDER

**FLAG SALUTE** 

**ROLL CALL** 

**PUBLIC COMMENT** 

CONSENT ITEMS (Items 1 - 3) — All matters listed under Consent Calendar are considered routine and will be enacted by one motion. There will be no separate discussion of these items prior to the time of voting on the motion unless members of the Commission, staff or public request specific items be discussed and/or removed from the Consent Calendar for separate action.

\*1. MINUTES OF THE PARKS AND RECREATION SEPTEMBER 8, 2010 COMMISSION MEETING

Recommendation to approve the Minutes of the Parks and Recreation September 8, 2010 Commission Meeting.

\*2. LANDSCAPE DIVISION MONTHLY REPORTS FOR SEPTEMBER AND OCTOBER 2010

Recommendation to receive and file the Landscape Division September and October 2010 Monthly Reports.

\*3. BUILDING AND FACILITIES DIVISION MONTHLY REPORT FOR SEPTEMBER AND OCTOBER 2010

Recommendation to receive and file the Building and Facilities Division September and October 2010 Monthly Reports.

### REGULAR BUSINESS (Items 4 – 9)

# \*4. FULLERTON MUSEUM CENTER ASSOCIATION OPERATION AGREEMENT WITH THE CITY COUNCIL

Recommendation that the Parks and Recreation Commission recommend to the City Council the approval of Amendment #1 to the Operations Agreement between the City Council and the Fullerton Museum Association.

### \*5. OPTIONS FOR THE SKATE PARK AT INDEPENDENCE PARK

Recommendation that the Parks and Recreation Commission review options regarding the future of the skate park.

### \*6. TRAIL AD HOC ADVISORY COMMITTEE REPORT

Recommendation that the Parks and Recreation Commission receive and file this report.

### 7. REPORT ON CITY COUNCIL AGENDA ITEMS

- Fullerton Community Center Project
- Commissioner Application Process
- Fullerton Transportation Center Specific Plan

### 8. DIRECTOR'S UPDATE

- Fall Program Updates
- Capital Projects Update

### 9. COMMISSIONER COMMENTS

### **ADJOURNMENT**

\*Written Material Attached

Any writings or documents provided to a majority of the Parks and Recreation Commission regarding any item on this agenda will be made available for public inspection at the Parks and Recreation Department front counter at City Hall located at 303 W. Commonwealth Avenue, Fullerton, California during normal business hours. In addition, such writings and documents will be posted on the City's website at www.ci.fullerton.ca.us.

# CITY OF FULLERTON PARKS AND RECREATION COMMISSION Draft Meeting Minutes

Regular Meeting City Council Chamber Monday, September 13, 2010 6:30 p.m.

#### CALL TO ORDER

Vice Chair Shanfield called the meeting to order at 6:30 p.m.

FLAG SALUTE

Commissioner Morgan led the flag salute.

ROLL CALL

Present: Shawna Adam, Sueling Chen, Scott Hayes, Wes Morgan, Kathleen Shanfield

and Carl Van Gorden.

Absent: Scott Stanford

Staff: Parks and Recreation Director Joe Felz; Redevelopment Executive Director

Robert Zur Schmiede; Senior Planner Jay Eastman; Parks and Recreation Managers Hugo Curiel, Judy Peterson and Dannielle Mauk; Recreation Supervisor John Clements; Parks Project Specialist Doug Pickard; Building and Facilities Superintendent Lyman Otley; Landscape Superintendent Dennis

Quinlivan.

**PUBLIC COMMENTS** 

None

CONSENT ITEMS (Items 1 - 3)

Commissioner Morgan MADE A MOTION and Commissioner Hayes SECONDED the motion to approve the consent items.

AYES: A

Adam, Chen, Hayes, Shanfield, Van Gorden

NOES:

None

ABSENT:

Stanford

The MOTION PASSED unanimously.

### REGULAR BUSINESS (Items 4 – 10)

### GOOD NEIGHBOR POLICY AT THE LIONS FIELD COMPLEX

Recreation Supervisor John Clements presented details of a Good Neighbor Policy at the Lions Field Complex.

Commissioner Questions: Commissioner Morgan wanted to know if there had been a good neighbor policy with the old Lions Field prior to the renovation and asked if the youth groups were informed of a good neighbor policy and were in agreement with the policy. Commissioner Morgan also inquired if the synthetic turf area would be the starting and ending location for the 5K runs. Commissioner Shanfield asked what special events besides sports would require permits. Commissioner Chen expressed concern regarding "no more than four special events per year" and the 5K run event starting time as to how it would affect the residential neighborhood. Commissioner Hayes asked if the course would be contained in Hillcrest Park. Commissioner Van Gorden wanted to know how the signs were being posted.

Recreation Supervisor John Clements stated there was no previous good neighbor policy at Lions Field and indicated the policy meets the parameters of the youth groups utilizing the facility and confirmed the start and finish location of 5K runs would be on the synthetic turf. Supervisor Clements said the special events would be grand openings or league operated sports related events and stated the race events typically start earlier; however, he noted sound restrictions would apply. He indicated the 5K runs would go through the parking lot and a couple of times around Hillcrest Park; although, the specifics are not firm, he confirmed the event would be contained within the park. Supervisor Clements noted signage will be attached with clips or zip ties and Director Felz stated staff is reviewing signage guidelines with the sports groups.

Commissioner Chen MADE A MOTION and Commissioner Adam SECONDED the motion to recommend that the Parks and Recreation Commission approve the Lions Field Complex Good Neighbor Policy and recommend approval by the City Council.

AYES: Adam, Chen, Hayes, Shanfield, Van Gorden

NOES: None

ABSENT: Stanford

The MOTION PASSED unanimously.

### APPOINTMENT OF COMMUNITY MEMBERS TO THE LEMON PARK MURAL PLANNING COMMITTEE

Director Felz presented recommendation that the Parks and Recreation Commission appoint Suzy Hernandez to the Lemon Park Mural Planning Committee to replace Michael Maciel.

Commissioner Questions: Commissioner Chen asked where the mural would be located.

Director Felz indicated that most of the work has been directed toward the restoration plan for all of the current murals and noted other details are still forthcoming as this involves a five-year plan.

Commissioner Morgan MADE A MOTION and Commissioner Adam SECONDED the motion to recommend that the Parks and Recreation Commission appoint Suzy Hernandez to the Lemon Park Mural Planning Committee.

AYES:

Adam, Chen, Hayes, Shanfield, Van Gorden

NOES:

None

ABSENT:

Stanford

The MOTION PASSED unanimous

### 6. FULLERTON TRANSPORTATION CENTER SPECIFIC PLAN

Director Felz presented a PowerPoint presentation review of a specific plan proposal for properties in and around the Fullerton Transportation Center, which included several public park spaces: a public plaza, two neighborhood parks, and several "paseos" or walkways. Director Felz introduced Redevelopment Executive Director Robert Zur Schmiede and Senior Planner Jay Eastman from Community Development for opening comments.

### **PUBLIC COMMENTS**

Vice Chair Kathleen Shanfield: If any of you would like to come up and make comments, you are welcome to at this time.

### Rachel Perez, Franklin Avenue, Fullerton:

Rachel Perez: My name is Rachel Perez and I grew up in the Truslow area and I am here with my mom, because she still lives there. According to the south parks, where all of the little yellow ones like Truslow are. Is it that a big building? The building in the back where the old railroad tracks used to be before the Truslow alley?

Director Zur Schmiede: It's the old warehouses.

Rachel Perez: The warehouses there in the back of the alley?

Director Zur Schmiede: I think that alley actually has a name. Isn't it Patterson Way? Isn't that the name of the street?

Rachel Perez: Well, it was Truslow Street and behind it was the alley and then we had the railroad tracks too.

Director Zur Schmiede: The yellow buildings are between the railroad tracks and the alley. It's where the warehouse buildings are today.

Rachel Perez: Okay. Well, the majority of the women here, they live on Truslow. In other words, you could say in front of those warehouses.

Director Zur Schmiede: The warehouses.

Rachel Perez: Is that going to affect them in anyway, this project, where the City acquires the properties if they need be?

Director Zur Schmiede: No, it would not. There's no property acquisition planned. The development that's shown in this plan would occur all to the north. This would happen over a period of time and what you would see, as an adjacent resident, is to have those warehouses replaced with buildings that would have residential units in them and the side of the site closest would be a two-story minimum.

Senior Planner Eastman: Three.

Director Zur Schmiede: Three-story.

Rachel Perez: Just like what's across the street?

Vice Chair Shanfield: SOCO?

Director Zur Schmiede: Yes.

Rachel Perez: Something like that?

Director Zur Schmiede: Yes, it's very similar to that.

Rachel Perez: Because the majority of them near there -- since this project is coming up, they're assuming that their properties might be --

Vice Chair Shanfield: Taken?

Rachel Perez: It may be acquired for this project.

Director Zur Schmiede: If we have your information, we would be happy to sit down with you as a group or individually and answer specific questions.

Rachel Perez: I think that would be good.

Director Zur Schmiede: Yes. We'd be more then happy to do that.

Rachel Perez: Because that was their main concern with the project is if their homes are going to be part of where they might be acquired.

Director Zur Schmiede: They are not, but we'd be happy to sit down and talk a little more around a table.

Rachel Perez: All right. That would be good.

Director Felz: We'll get your contact information and our Department will take the lead on getting in touch with you.

Rachel Perez: Okay. Well, thank you.

Vice Chair Shanfield: I have a question for you, because you live in that area. They're looking at a small park somewhere right along there. Can you think of the best place for that park? Would it be appropriate to put a park in one area versus another or do you just feel that a park anywhere in that area would be helpful?

Rachel Perez: I'll ask them and see. I moved out of the area. There's the little Truslow Park there and that little park too. It's going to get crowded.

Director Zur Schmiede: Maybe you could ponder that and then when we meet with you we could talk about it.

Rachel Perez: I'll keep that in mind and I'll let them know too.

Director Zur Schmiede: Great.

Vice Chair Shanfield: Thank you for coming up and speaking.

Rachel Perez: Thank you.

Vice Chair Shanfield: Any other members of the audience? Okay, so we'll bring it back up here. Go ahead.

Commissioner Carl Van Gorden: I want you to know that I drove over there and walked over there and I'm as confused as they are. It just doesn't look the same on a map as it does in real life. The question, though, is about the Fender Alley. Is that a traffic-patterned street? Is that limited traffic? One of these two men mentioned loading and unloading.

Senior Planner Eastman: Yes, it would continue to be an alley. It would provide access for service purposes as an alley does. It would provide for access to residential parking and below grade underground parking. It would not be a street. It would be widened to be 30 feet to ensure that the heavier traffic and the loading and unloading can occur.

We have an existing alley in SOCO. That was a decorative paving project which enhanced it. It's only 20-feet wide. When you have businesses that are operating or two cars passing or pedestrians, there tends to be a tighter environment. So this plan takes what we learned there and widens the alley to 30 feet. That would be the new standard, but it's not a street. It would be an alley function.

Commissioner Van Gorden: Okay. So my concept, though, is in front of the Parks and Recreation Commission. I think somebody mentioned programming on that street?

Director Felz: I can probably clarify that. I used it as an introduction for a potential public/private partnership that we would have with the Fender Corporation for them to establish some presence in this area. That's the beginning of the theming of at least a

portion of this project or to their history in town and the fact that the electric guitar was essentially born right in this area of town.

That was one part of the theming and that they would locate some retail location that we would jointly operate. Our Cultural Services Division would have some partnership with the Fender Corporation in an ongoing operation down here and potentially some retail space or a service shop or something that we would jointly manage.

Commissioner Van Gorden: All right. But no programming or something in that area off of the street?

Director Felz: No, not in the alleys.

Commissioner Adam: I have questions about the parking. Phase one, you need to complete. There's a lot of concern about parking down in this area. Is it going to meet the needs for the commuters and for the residents? And then if we have the parks in those areas, will it also accommodate those who would like to access the parks? I have a few more questions to follow up, but main concern is parking.

Senior Planner Eastman: We brought in two parking consultants as part of the consideration of parking and we met with OCTA and had a discussion of what our obligation is in terms of their parking and their forecast requirements.

One of our parking consultants looked at shared parking. Currently right now, if you go down at 2:00, which is considered the peak hour during the day, half the parking spaces – not the commuters, but the retail spaces, the one-hour, the three-hour are open and not used. The commuter is completely full. We're not realistically utilizing our parking that we have optimally during the day. So, the parking program is in part to manage that better, paid parking, different times, trying to look at priority locations.

The evening activity and the retail activity, of course, occurs outside of office use and commuter use, so there's an availability of parking that occurs on the commuter properties, in that regard. Really, before anything happens in terms of the construction, the parking garage in SOCO west has to be built. That's 820 parking spaces. That needs to be built to accommodate the shift of the commuters from the lot where the parking garage is going to be built to that location. The timing on that is pretty positive.

Director Zur Schmiede: The contract has been awarded and the funding is in place and we're looking at a start of breaking ground on that sometime later this year.

That's on the site of the former juice plant. What's interesting about that site is the railroad bridge. When you go down Harbor Boulevard, the width of the bridge deck is sufficient and will have direct pedestrian access from the garage directly onto the train platform. You'll walk across the Harbor bridge past the Spaghetti Factory, because it actually fronts on the train platform, so there's direct platform access from that garage. That is 820 spaces that would also be available evenings and weekends, in addition to the garage that's shown within the FTC specific plan.

Senior Planner Eastman: So the FTC's specific plan would be 810 parking spaces or more. Of that, 300 parking spaces will be available for commuter use. That's our

commitment to OCTA based on our agreement with them as to what we need to provide. There would be on-street parking as well. The residential would all be parked on site, so any residential project constructive would have all of it's parking provided below the residential. The 510 parking spaces in the parking garage will accommodate the retail parking needs for the project. That's like build out, so we're basically front-loading all of the parking early in the project development, rather then phasing it in. And then the office would provide for parking on site, office site, but it would be available for public use after hours.

Commissioner Adam: Now, with regards to the retail parking, will there be a charge for parking there for the retail space? First, parking for office space, knowing that there are some locations in our city that this has a concern and I am thinking up at St. Jude with the parking, in the realtor's offices and some of the business. They have parking provided for their customers that people are coming and infiltrating because they're not charged. It's taking up their spaces for their customers. Are we looking at something similar down here?

Senior Planner Eastman: This whole shift to charging for parking is one that may come to the downtown and was in this year's budget hearings. One of the directions given by the Council -- which we're working on as a staff to bring back to them – are some recommendations to introduce some form of paid parking in the downtown area.

We're doing a lot of talking with downtown merchants and we've developed some ideas. For instance, just take the new 820-space garage that we're going to start construction on soon, that's State funded. The people with the State Division Rail that, providing the money, they don't have a problem with introducing a parking charge for commuter users. But, they do want it free at opening, because they want to get the commuters used to using the facility. If a paid parking system is introduced, they want it to be part of an overall plan, not just targeted to that particular garage. And, frankly, we would want the same thing.

I think where Fullerton stands in the continuum of free parking versus paid parking, we currently have one garage facility in the downtown that charges for parking and that's the Plummer parking garage. It's two dollars a day, but because of the cost to operate the parking are pretty substantial, over time, we will migrate to a paid-parking system of some sort. Typically they have validation, where if you patronize a business, you can have a validation stamped and then you get so many hours free. All of those details have not been worked out. I think the short answer to your question is, that at some point will there be a charge for parking in the downtown? I believe there will be. Do I know what it would be exactly tonight, no.

Commissioner Adam: Okay. So we're looking at wanting people to utilize the space for coming down and shopping and commuting and to have access, but then we also are going to start charging in order to accommodate people to come down and use this facility, which goes right back in, then, to utilizing the parks themselves. I'm thinking of mom's in the strollers or mom's wanting to taking the train down to San Clemente or somewhere down to the Mission or up to Santa Barbara, using the parking spots, using the structure or the schools are using the facility down there for any number of reasons and yet being charged for the parking.

So I just want to make sure that it's noted on record when the Council reads that parking's going to be – our residents that are paying for this project, will be subsidizing other people from outside an area coming and using the facilities for commuting.

Senior Planner Eastman: One of the parking studies that we did looked at transitoriented developments. We brought in someone that's familiar with these types of commuter facilities and his experience is well-regarded in the industry. He has a lot experience on parking-related issues. We looked at paid parking in that study as just a very nominal fee, so it would be a dollar a day, two dollars a day for commuter use for the parking garage and then the west parking garage would be free. All on-street parking would be free, but we'd like to have time limits, because you don't want commuters parking there all day. One of the things that paid-parking does, even if its fifty cents an hour, is that it in part discourages people parking long periods of time.

Let's say you're running to LA and all of the commuter parking spaces are being used and you're only going up there for a meeting and you're coming back and it's a half a day, you may find it worthwhile to park in a one to three hour parking space with paid parking being provided after the first three hours or after the first two hours. At fifty cents an hour, it's cost effective for you to park there. It's convenient to run up, come back, likewise.

The details of the parking management plan will have to be worked out and those types of issues will have to be considered. We have a lot of retailers that are very concerned with that. We need to put in place a validation type of program for the retailers, because they don't want to be impacted. We'd like to include a valet parking program. So the issue is, where do those cars get put and how does that valet program work. Our prospective here is that paid parking is a tool that we can use to help manage parking better and accommodates people's needs.

Director Zur Schmiede: And I think more to the Parks and Recreation Commission, if there are events in which we hope there will be in this transit park, that there would need to be provisions for event parking, we understand that.

Director Felz: If I could just weigh in on both the bigger picture and then the specific situation. Rob is correct; we could make provisions for events. New Year's Eve comes to mind to provide free parking, because we want to encourage the community to come down. So this would all be done in the context of the entire downtown, as Rob mentioned. We've been directed to look at that in detail and come up with a program and it's likely we are moving in that direction. It's something that we are living every single day, and something that will come before the Commission, in the St. Jude area. Regional medical centers now within Southern California or throughout the State have paid parking.

The St. Jude situation is not a good one, but the last thing that you're going to hear from our Department is a recommendation that the City and the Commisson are going to be the last caretakers of the only free parking in an area, because it's just a disservice to the community to be the last free parking in an area. We don't control all of the parking assets in St. Jude, and our citizens are victims of poaching of the free parking in the area as, again, the City lots are the last free parking. So we think there are ways in that situation that don't penalize our local citizens who are paying for this

and a way to create a resource of funds to be able to keep the parking lots well maintained and clean and safe. That's another goal of ours. So you'll be hearing this the St. Jude project first, and we've got some experience with that.

Vice Chair Shanfield: I have a question or I guess comment about these paseos. I'm not clear on really the importance of them, except that they do offer a nice visual, more then just a narrow alleyway between buildings. But I can't imagine really programming. I can imagine some nice landscaping that they're pedestrian friendly and will be great for the business and residents there, but enlighten me a little. I'm not really sure of their importance to us here at Parks and Recreation.

Director Felz: Our thought as a department, Hugo and Danielle and others, is that they are important from a programming standpoint. When we are north of Commonwealth and are getting people on to Commonwealth, the nice pedestrian walkways that have some more width to them, they could be programmed with some small vendors, spots, tables and expand, say a market environment and that the Thursday night market could expand down here potentially - so they are very useable. There are examples where they do get programmed. You could put even a small music group there or something in these areas like an art walk opportunity.

Manager Danielle Mauk: Do you want me to comment, Joe?

Director Felz: Yes, if you want.

Manager Mauk: You could definitely program any space. We have so much going on in the downtown area now that that would just be an extension of what is currently going on. Like Joe said, it could be a guitarist; it could be just a simple hotdog vendor for somebody walking by grabbing something to eat, grabbing some vegetables. Not an identical imprint of what we are currently doing, but if you provide a view of walkway through, then you can extend it. We do New Year's Eve, but there are a lot of cities that do weekly farmer's markets that are four city blocks. So the potential for growth is there.

Senior Planner Eastman: The issue of the paseos, in part, depends whether it's City owned or whether it's privately owned with a public easement over it. That depends on who develops it, if it's on City property now and there's a development agreement, etc. As a zoning document, it's very broad brush in terms of what our vision is and objective. Either way, those spaces would be potentially programmed through. Private properties work through the City or a combination of both.

As it relates to what the City would look for in terms of programming, a small space like that, it's really a circulation pattern for pedestrians. We've seen other cities that have done small lease agreements with flower stands. Not so much that it generates any revenue or even activity in the sense of entertainment, but it provides for activity and it provides for a lessor on the street at certain hours where we want to have eyes on the street. We want to have activity, we'll want to have people. We just want to have things out there. So that sense of providing for responsibility and activity and viable use, creates a dynamic that's important. The activities, the programming could be from art, it could be just Christmas lights, it could be from a variety of things. The plan is

intended to make sure that that flexibility and that visioning is installed as part of the project and what moves forward.

Vice Chair Shanfield: Okay. I have a couple more questions. One is, why not just go for LEED certification rather than the minimum? I mean, you're doing the zero water. It seems like every other aspect of this plan is geared towards it.

Senior Planner Eastman: One of the things we looked at very intently in terms of the process is, how do we create a plan that achieves the vision and reduces development barriers to the extent possible? The plan will be LEED, which is a neighborhood development certification program. That's looking at the entire 39 acres, and we'll have a certification. It requires that certain things be done to achieve that, but that is the City's goal and objective to do.

Each individual project will only be LEED equivalent in part, because we're looking at what we try to achieve. So if it meets the LEED criteria, at least the minimum, we establish minimum and maximums in zoning. So the bare minimum is equivalency, which means that it's achieving the end result. Now, if it actually needs to be certified as a LEED project, which adds cost and it adds time to the development project, which would be something that the developer realistically needs to accept and do, then that's a cost and a burden to them.

From the City's standpoint, all we're doing is receiving recognition. The end product is certification equivalency anyway. You're getting the solar ratings, you're getting the products, you're getting all the good things that that does. A lot of the details in here in terms of bicycle racks, the net zero water, a lot of these things will count towards the LEED point system. So we're getting the results, we're just not mandating as a minimum certification and process.

Vice Chair Shanfield: And my last question, is this the point in time where we would make specifications about these parks, in terms of should they have artificial turf, adequate lighting? Or is that really going to be something later?

Senior Planner Eastman: It's difficult in part for the neighborhood parks primarily to really identify. Obviously, if there's a certain desire of preference by the Commission that would give direction to any developer that's moving forward of what your thoughts are on the plan, it is helpful. We don't know necessarily the size of the parks or where they're located. The south neighborhood park could actually be two smaller parks. The plan allows for that. We'd prefer that it be one, but we may not have that kind of control based on what's developed, which changes a little bit of the programming that occurs.

The plan identifies that for the neighborhood parks, that the Parks and Recreation Department would be involved in reviewing and approving the planning and the programming for those spaces, even if they're privately owned, because they are community asset. Even though they're intended to be built for that neighborhood and their neighborhood needs.

Vice Chair Shanfield: So a chance to do that will come later?

Senior Planner Eastman: Either through the Parks and Recreation Director, if it's privately owned or you would have a proper opportunity if it's publicly owned. The transit plaza is in fact intended to be publicly owned and the specific plan calls out that there would be, I think, four to six or five to seven community meetings that would be a committee to review and program that space. So as a public facility on the transit plaza, there would be direct involvement by the public and community for that.

Commissioner Chen: I would like to compliment Jay for the thorough and excellent presentation and this excellent job. I only see one parking garage, but you actually clarified that. Every building will have its own parking underneath that will take care of a lot of residents and office buildings that will be there. I understand the north and the south parks have some complications because of the public land and private land situation.

Now, are you able to point out what the private lands are at this point, like the warehouses? You can't just build parks on a warehouse that you don't own, so what are the actual private lands on your whole map here or the public lands, either way.

Senior Planner Eastman: Let me get to the aerial photograph up here.

Director Zur Schmiede: While Jay is getting to the slide, one piece of information is that the City and/or the Redevelopment Agency own and control somewhere around nine acres of the study area. And the study area is around 40. So we own, roughly, 25 percent, not including the streets, which would add a little more. So Jay's going to kind of show you where those are.

Senior Planner Eastman: So we'll start in this corner and work our way to the southeast. All the parking lots that are provided for the one-hour, three-hour commuter parking is all Agency-owned, actually, as is the parking garage here.

The OCTA bus facility is also Agency-owned, but there's a lease agreement with OCTA. All of these properties through here, are within the control of the Agency. So a development agreement would be part of a development of that property.

Director Zur Schmiede: The build out of this is over quite a few years and there's no expectation that the Redevelopment Agency is going to be involved in any additional land acquisition. For instance, the warehouses to the south of the railroad track, those are under private ownership. That private owner could choose to develop under this plan. There's no need for the Agency to become involved in that. It would be just a development review through the Community Development Department.

Senior Planner Eastman: The properties east of Lemon, the City currently owns the fire station building and these vacant properties. They're not vacant; they're paved areas for fire trucks and training facility and storage. The City owns a portion of this property. Development on that property would require a development agreement with the City that the developer would have to relocate the fire facility, build another facility on another property and then provide for a park.

There are questions as to whether or not a pro forma works out in that regard. And so in part, that's why the park isn't just proposed in one location. It has four different

alternatives because of the other properties that would probably be acquired and brought into that development agreement of that process, so there's certain flexibility. But the City does own these properties as well.

On the south side of the tracks, the City only owns the strip of land – well, we have the alley, but there's a strip of land that runs along the south side of the warehouse buildings that is former Union Pacific Railroad right of way. The Agency acquired that property when the underpass was built. It used to be that the railroad tracks crossed Harbor and then came straight through here, and then linked up to the south side of the BNSF (Burlington-Northern-Santa Fe) road right of way.

When the underpass was built, they included in this bridge, a railroad – or the Walnut Avenue included a railroad crossing as part of that and they re-oriented the train to go through here and the Agency ended up with this strip of land. Part of it went into making the alley wider then the normal 20-foot. It's currently about 25, 28 feet. It has parking on one side and it has a greenbelt with a sidewalk that really doesn't go anywhere.

So part of the development of the south park includes this alley, which would be redone with the decorative paving and it would be a 30-foot width. The remaining property of what the Agency owns and the alley combined, which is whatever is left out of those 30 feet, totals about 27,600 square feet.

This specific plan says that the Agency would give that property to a developer to build a 27,600 square foot park, so that they have access to the alley with their development on the south side. They don't actually lose that 27,600 square feet, we're just basically swapping it, because along the lineal strip, it doesn't do us any good and it doesn't provide them access to that alley. The specific plan allows for that trade to take place. The problem that Planning identified is, it doesn't require that trade to take place. So we've identified that some language needs to be in there so that we don't end up with that strip of land remaining and no park being built and just development.

Those are the properties that the Agency and the City own. Actually, we do own the Spaghetti building. The Agency owns the Old Spaghetti Factory as well as the Santa Fe Depot. Does that answer your question?

Commissioner Chen: With that, what's the Department vision of expanding from 25 to 100 percent? Was it through eminent domain? Was it through the Agency acquiring or developers acquiring or everything just is open and it may not even happen at all?

Director Zur Schmiede: The Agency's power of eminent domain in this project area expires at the end of this year, so there will be no eminent domain. If there was additional acquisition, it would more then likely be a developer coming in under the plan and accomplishing that acquisition and site assembly. The Agency would more then likely — I'm just looking ahead as there could be a situation where the Agency might become involved financially in the transaction if it was warranted. But there's really no plan to acquire additional property. If the specific plan is approved and the developer submits a plan that the Agency approves and we are successful in getting either a state grant or the Agency decides that they want to fund this parking garage, which I don't

think they would, then we would begin moving forward on the phase one properties that is basically to the west of Lemon.

Commissioner Chen: Okay. Thank you.

Commissioner Morgan: If it's okay with the Commission, I was going to come forward with some comments about the park recommendations specifically, because I am assuming from the staff Report that's where you're really looking for some recommendations from us for tonight, knowing we'd see some other things later as things move forward.

Director Zur Schmiede: It seems like the significant one for this Commission is the Transit Park and how that provides access to the train station and that ring road.

Commissioner Morgan: And I'm working on the assumption that the sizes that I have gleaned out of the report are somewhat fixed and the locations particularly with the Transit Plaza is fixed. I mean, that's where you would see it going and that's a very reasonable and good location. If we get to 30,000 square feet, that's a decent size. It's about three-quarters of an acre. It's centrally located and I think that would be a very good public space that would have a lot of potential for a variety of gatherings, whether they were regularly scheduled or some special event.

My comments, just to kick this part of it off, if the Commission is ready for that, is that when I look at the alternatives for the North Park, I see where it's split in half on either side of Santa Fe, north and south. It sort of divides in half and achieves less. So putting it in the middle of the street, I don't really see that and I don't prefer the alley. The one that is on the top right-hand corner where we've got the entire 13,000 square feet in basically a square on the south side of Santa Fe, that's the northern edge of the park. I would prefer that one. So I will just throw that out there.

My final comments are, when it comes to the South Park and it was referred to earlier by Joe, that if you put it down there towards the west, it's kind of isolated. And then the other one way down at the end is isolated. I would like to see the South Park property, which is approximately, 28,000 square feet, be a single-site, rather than two parks and be located centrally somewhere on either side of what is – and help me – is that Walnut or is that Lawrence? Lawrence – either side of Lawrence in the middle of those yellow buildings that would be the south development. So I think you create a triangular effect between the Plaza up to Santa Fe, down to Lawrence and back again and you get the most out of what is a grand total of about an acre and a half.

Director Zur Schmiede: And you key off of Truslow Park?

Commissioner Morgan: Yes. Those are my comments about the specific things about the park proposal for tonight's discussion on that element of this.

Commissioner Hayes: You had suggested Option 4, but I'm not clear which Option 4 is. Is that the one on the top right or the bottom?

Senior Planner Eastman: It's Option D. This is "A" and then there's "B". There's "C" and "D".

Commissioner Morgan: I'm going for "B", because I didn't want the park bordering on the alley.

Commissioner Van Gorden: My question, if I may jump in there, is it the plan of Santa Fe to be closed if that park was located on the alley? That would be "A"?

Director Zur Schmiede: You mean if they put the park in the middle of Santa Fe?

Commissioner Van Gorden: Yes.

Director Zur Schmiede: No.

Senior Planner Eastman: The plan for this came out of our framework plan. Originally, there was a concept that it be one way with a narrow one-way road that went around the park. There was a lot of concern expressed through staff on different Departments as well as just the functionality of that. The road actually jogs to the south. It's a two-way road. It has parking and then heads up this way. It has a fire lane so this would not be accessible on the north side. It would essentially be a large 26-foot wide pedestrian walkway, tree-lined, as shown here in the plan, tailed off for fire department access to the buildings on the north side.

Commissioner Van Gorden: They're not barricades, then, they're crosswalks?

Senior Planner Eastman: Those are graphically shown as beautiful lines in pavement, yes.

Commissioner Van Gorden: Okay. Thank you, that helps.

Commissioner Morgan: So going back to that Option B and Option D, I like both of them because they're off the street and you don't have the traffic going around them. Now, you guys have put a lot of thought into this, so what was your thought as to Option D, being the best Option?

Director Felz: We weighed in on "D" versus "B" in that it was a closer situation to Commonwealth and the paseo served off of Commonwealth for a little more public access, in our opinion. Not a significant difference between the two, but that pedestrian access off of Commonwealth, led us to land on this Option.

Commissioner Adam: With Option D, with the alley going down, and if I understand correctly, the alley's going to be widened. Will it have the same type of decorative pavers as the SOCO area so that skaters and skateboarders won't utilize it?

Senior Planner Eastman: The details of the paving of the alley have not yet been determined. The plan for a variety of reasons would likely have permeable pavement, so that water can saturate through it to the degree that that's beneficial. But the intent is that it would have either pavers similar to SOCO or different design or a solid treatment that's permeable so they have permeable concrete and asphalt. The details have not been worked out beyond that. It would just be decorative.

Director Zur Schmiede: If the Commission had some suggestions about that, we would certainly like to hear them.

Commissioner Adam: Having been here for awhile, when they open up comments, the community wants to know, well, are the skaters going to be there? Are they going to have access to the area? I keep telling Commissioner Hayes, oh great, another Venice Beach area.

So after listening that we can have people coming down here and vendors and hotdog stands or the little trolley thing and all of that, I'm just hoping that we are not going to impede pedestrian's usage with skaters. Is that alley the bikeway?

Senior Planner Eastman: This is a 30-foot wide alley that provides access to the private property.

Commissioner Adam: But is that a bike path?

Senior Planner Eastman: It's not a bike path officially, but, yes, bicyclists would use it. And this is the paseo that could occur here.

Commissioner Morgan: My concern about the alley is that's where the garage doors would be.

Senior Planner Eastman: Because all the residential parking would probably subterranean, there would be a ramping that occurs, yes.

Commissioner Morgan: Yes, but that's where they go to park. They use that alley to get to their parking, the residents.

Senior Planner Eastman: Yeah, it's hard to really know for certain.

Commissioner Morgan: Yeah, I know. It's too soon.

Senior Planner Eastman: It provides that ability for them to do that. I would suspect that they will have two points of access, egress and ingress. Both from Santa Fe and the alley or from Lawrence and Santa Fe.

Director Zur Schmiede: For us tonight, we just need to approve your recommendation for the revised figure of 4.2 and adding any additional language in; is that correct? We don't have to be specific on Option B or Option D?

Director Felz: No, what you've done is great. And that's to give us some good solid feedback appropriate for this level of the planning stage and then those are two specific technical things that we're asking you to do. So you will do all of those three things.

Vice Chair Shanfield: I'd just like to make one last request. Since it sounds like it's going to be a lot of hardscape, we can have as much landscaping in terms of trees and bushes and greenery? It can be low-drought tolerant kind of things, but it looks to me it's going to be very urban and the visual aesthetic relief of some green would be really nice. You guys always do very well with that in our city. We are the tree city, so I would

hope to see greenery there and not just hardscape. We would need to make a motion on this?

Director Felz: Having taken all of your comments, those will be included in the reports that then get forwarded to the Planning Commission and the Council. We have a recorded version of the meeting and will be getting all of those in detail forwarded. If we could ask for a motion on the two specific items or if there are any other questions, we would be happy to answer.

Vice Chair Shanfield: You guys have done a great job on presenting. Thank you, very much. Anybody want to make a motion?

Commissioner Hayes MADE A MOTION and Commissioner Morgan SECONDED the motion to recommend that the Parks and Recreation Commission approve the proposed Fullerton Transportation Center Specific Plans including the revised figure of 4.2 to the City Council, subject to revisions related to Civic Spaces and add language that assures the South Neighborhood Park is implemented, including land acquisition/dedication and construction.

AYES:

Adam, Chen, Hayes, Shanfield, Van Gorden

NOES:

None

ABSENT:

Stanford

The MOTION PASSED unanimous

#### SUMMER PROGRAM WRAP-UP

Director Felz noted summer programming for the Parks and Recreation Department has ended and stated the report summarizes summer programs and completed capital projects and highlights some of the fall programs.

Commissioner Van Gorden asked about Lions Field recreational trail on the North Slope being too steep and noted it needed to be leveled out at the top of the hill.

Director Felz acknowledged the trail would need some work by the maintenance department.

Commissioner Morgan said the water feature at Lemon Park is wonderful for the neighborhood.

### 8. REPORT ON CITY COUNCIL AND PLANNING COMMISSION AGENDA ITEMS

Director Felz updated the Parks and Recreation Commission on the following City Council and Planning Commission Agenda Items:

- West Coyote Hills Project
- City Budget

### 9. DIRECTOR'S UPDATE

## Fall Program Updates

Director Felz said the fall brochures have been mailed out; that staff discovered some pages missing, and that staff is investigating the source. He also noted the Market is busy and Halloween activities are starting.

### Capital Projects Update

Director Felz stated that the Hiltscher Park legal settlement changed the boundary as an abandonment of the 80-foot path and does not affect the project in any significant way. He also noted that the Lemon Park contract has been signed with NUVIS to complete the construction documents and will be out to bid; and that Hillcrest Park is moving forward with input to neighbors, and will address circulation of the park, including egress and ingress.

Commissioner Morgan stated that the meetings (Hillcrest Park Advisory) have been very active and email communication has been excellent to organize the meetings.

### 10. COMMISSIONER COMMENTS

Commissioner Hayes commended staff and commissioners' work in completing Lions Field. Commissioner Adam inquired if there is an acting Parks and Recreation Director in line to take over the position.

Director Felz indicated there are additional staff resources available; however, a plan is not approved at this time.

### **ADJOURNMENT**

Vice Chair Shanfield adjourned the Parks and Recreation Commission meeting 8:55 p.m.

Respectfully submitted,

JF/nb/cr



# PARKS AND RECREATION COMMISSION AGENDA

MEETING DATE:

OCTOBER 11, 2010 (CANCELLED)

TO:

PARKS AND RECREATION COMMISSION

FROM:

**DENNIS QUINLIVAN, LANDSCAPE SUPERINTENDENT** 

SUBJECT:

SEPTEMBER 2010 LANDSCAPE DIVISION MONTHLY REPORT

### **PURPOSE**

The purpose of this agenda item is to report to the Commission on the status of the Landscape Division's monthly maintenance activities.

### SUMMARY

- 1. **Tree Division Update** West Coast Arborists Inc. (WCA) is providing contract tree services to the City for the fiscal year **10/11**. As of September 30, 2010;
- 5,265 trees have been pruned
- 239 total trees removed
- 29 trees have been planted
- WCA continued trimming in the downtown area in addition to beginning Zone 10 (West Coyote Hills Area). Crews are also working to complete the annual palm pruning cycle throughout the city.
- The Tree Division received **55** tree related service requests in the month of September.
- Red Imported Fire Ants were reported at 1 location in September. OCVC began treatment again on October 1, 2004. The City <u>does not</u> treat RIFA on private property. Citizens can call the OCVC at (714) 971-2421.
- 3. The Landscape division received and responded to 12 reports of bee activity in September. The City <u>does not</u> eradicate hives on private property, as this is the responsibility of the property owner. The County Agriculture Commissioners Office does not test bees for Africanization after determining that all hives are at least partially Africanized. City staff is currently making every effort to save bees within staff capability. Several were removed and successfully relocated without injury to the public, staff, or bees.

- 4. Landscape Division Crews completed the following projects in the month of September:
  - Fertilized and aerated Fullerton Sports Complex and Bastanchury Park
  - Participated in the Euclid Improvement Zone Clean up Project
  - Installed new benches in the handball court area at Indy park
  - Repaired vinyl posts and rails at Bastanchury Park
  - Removed bootleg loads of discarded concrete at Bastanchury Tree Farm and near Fairway Village
  - Removed metal tree stakes from the newly established trees on Valencia and West Street (Richman Area Project)
  - Completed trimming on Lost Trail
  - Removed several downed branches and debris from Juanita Cooke Trail
  - Water consumption in parks and medians has been reduced from the target years of 26,597,800 to 13,552,000 Gallons. January through August 2010
  - Despite staff reductions, the irrigation crews were able to repair 14 mainlines within the park system in September in addition to completing their regular maintenance schedules.

The Division received 33 landscape related service requests in September.

Dennis Quinlivan

Landscape Superintendent



# PARKS AND RECREATION COMMISSION AGENDA

MEETING DATE:

**NOVEMBER 8, 2010** 

TO:

PARKS AND RECREATION COMMISSION

FROM:

DENNIS QUINLIVAN, LANDSCAPE SUPERINTENDENT

SUBJECT:

OCTOBER 2010 LANDSCAPE DIVISION MONTHLY REPORT

### **PURPOSE**

The purpose of this agenda item is to report to the Commission on the status of the Landscape Division's monthly maintenance activities.

#### **SUMMARY**

- 1. **Tree Division Update** West Coast Arborists Inc. (WCA) is providing contract tree services to the City for the fiscal year **10/11**. As of October 31, 2010:
- 6,235 trees have been pruned
- 278 total trees removed
- 48 trees have been planted
- WCA continued trimming in the downtown and Civic Center areas and are near completion in zone 10 (West Coyote Hills).
- The Tree Division received **43** tree related service requests in the month of September.
- Red Imported Fire Ants were reported at 4 locations in October. OCVC began treatment again on October 1, 2004. The City <u>does not</u> treat RIFA on private property. Citizens can call the OCVC at (714) 971-2421.
- 3. The Landscape division received and responded to 12 reports of bee activity in October. The City does not eradicate hives on private property, as this is the responsibility of the property owner. The County Agriculture Commissioners Office does not test bees for Africanization after determining that all hives are at least partially Africanized. City staff is currently making every effort to save bees within staff capability. Several were removed and successfully relocated without injury to the public, staff, or bees.

- 4. Landscape Division Crews completed the following projects in the month of October:
  - Follow up planting at Lions Field
  - New backflow, wires and flow meter installed at Bastanchury Road median at the 57 freeway
  - Finalized planting at Child Guidance
  - Fertilization applications continued at Fullerton Sports Complex and Golden Hill Elementary School
  - Memorial tree replaced at Hillcrest Park
  - Non-native plant material removed at Laguna Lake
  - Perimeter fencing repaired at Pooch Park
  - Follow up planting at Independence Park Entrance area.

The Division received 33 landscape related service requests in October.

Dennis Quinlivan

Landscape Superintendent



# PARKS AND RECREATION COMMISSION AGENDA

MEETING DATE:

**OCTOBER 11, 2010** 

TO:

PARKS AND RECREATION COMMISSION

FROM:

LYMAN OTLEY, BUILDING AND FACILITY SUPERINTENDENT

SUBJECT:

SEPTEMBER 2010 BUILDING AND FACILITIES DIVISION

MONTHLY REPORT

### **PURPOSE**

The purpose of this agenda item is to report to the Commission on the status of the Building and Facilities Division's monthly maintenance activities.

### SUMMARY

- Lion's Field Complex- This project is completed. The City has taken over the field complex and we have begun the contracted custodial duties and building maintenance operations.
- 2. **Electrician Inspections-** Inspected lighting and made minor electrical repairs at: Lion's Field, Muckenthaler, Bastanchury Sports Complex, Independence Park and the Museum Plaza. These inspections include replacing burnt out lights, checking and repairing electrical devices and services. Detailed results are available on request.
- 3. **A/C Servicing-** The Electricians serviced the A/C units and changed filters at: Red Cross, Hillcrest Rec., Izaak Walton Cabin, Museum, Senior Center, Gilbert Rec. and Child Guidance Center.
- 4. **Graffiti Removal Update-** The division removed 47,818 square feet of graffiti at 352 sites in the month of September. Totals year-to-date- 144,621 square feet of graffiti at 1,185 sites. Average response time is 1-2 days.
- 5. **Custodial Inspections-** We completed 18 custodial inspections. The Facilities Superintendent and Facilities Supervisor will now assume those duties; consequently, there will be fewer inspections and a slower response time for repairs.

Prepared by:

Lyman Otley Building and Facilities Superintendent



# PARKS AND RECREATION COMMISSION AGENDA

MEETING DATE:

**NOVEMBER 8, 2010** 

TO:

PARKS AND RECREATION COMMISSION

FROM:

LYMAN OTLEY, BUILDING AND FACILITY SUPERINTENDENT

SUBJECT:

OCTOBER 2010 BUILDING AND FACILITIES DIVISION

MONTHLY REPORT

### **PURPOSE**

The purpose of this agenda item is to report to the Commission on the status of the Building and Facilities Division's monthly maintenance activities.

### **SUMMARY**

- Lion's Field Complex- This project is completed. The City has taken over the field complex and we have begun the contracted custodial duties and building maintenance operations.
- 2. **Independence Park Small Pool:** The project to re-plaster the small pool will begin in January.
- 3. **Electrician Inspections-** Inspected lighting and made minor electrical repairs at: Museum Plaza, Pooch Park, Amerige Park, Pacific Drive Park, Hillcrest Park, Hillcrest Rec. and Hillcrest Terrace. These inspections include replacing burnt out lights, checking and repairing electrical devices and services. Detailed results are available on request.
- 4. **A/C Servicing-** The Electricians serviced the A/C units and changed filters at: Independence Park Racquetball Court.
- 5. **Graffiti Removal Update-** The division removed 54,408 square feet of graffiti at 391 sites in the month of October. Totals year-to-date- 199,029 square feet of graffiti at 1,576 sites. Average response time is 1-2 days.
- 6. **Custodial Inspections-** We completed 15 custodial inspections. The Facilities Superintendent and Facilities Supervisor will now assume those duties; consequently, there will be fewer inspections and a slower response time for repairs.

Prepared by:

Lyman Otley Building and Facilities Superintendent



# PARKS AND RECREATION COMMISSION AGENDA

MEETING DATE: NOVEMBER 8, 2010

TO: PARKS AND RECREATION COMMISSION

FROM: DANNIELLE MAUK, CULTURAL AND EVENTS MANAGER

SUBJECT: FULLERTON MUSEUM CENTER ASSOCIATION OPERATION

AGREEMENT WITH THE CITY COUNCIL

#### SUMMARY

Consistent with changes contained in the approved City of Fullerton (City) FY 2010/11 budget, the Parks and Recreation Department has been working with the Fullerton Museum Center Association (FMCA) to amend their operations agreement with the City Council. The Fullerton Museum Center Association is a 501(c)(3) non-profit organization whose mission is to partner with the City in the operation of the Museum Center.

### RECOMMENDATION

That the Parks and Recreation Commission recommend to the City Council the approval of Amendment #1 to the Operations Agreement between the City Council and the Fullerton Museum Center Association.

### PROPOSED COSTS

No costs are associated with the proposed amendment. The FMCA will increase their contribution to the City therefore increasing the City's revenue base.

### DISCUSSION

The Operations Agreement between the FMCA and the City Council defines the terms and conditions of the management and operation of the Museum Center, specifically as it relates to the role of the Association in items such as exhibit selection, funding responsibilities, revenue sharing and fundraising activities. FMCA is financially responsible for supplementing any and all necessary exhibition and educational costs above and beyond the annual amount approved through the City's annual budget process. Distribution of shared revenues is determined in accordance with the City's annual budget process.

The recent financial crisis/recession has taken a significant toll on the City's budget. In order to address the City of Fullerton's \$8 million deficit, the City Council made several revisions to the 2010-11 operating budget. The Fullerton Museum Center Association's contribution/shared revenues paid to the City were increased as a result of the approved City budget. In summary, the result is a 30% increase in revenues to the City from the FMCA.

The City's Operations Agreement with the FMCA needs to be amended as a result of approval of the City's FY 2010/11 budget. The attached "Amendment #1" has been approved and signed by the FMCA. The following items are included in the amendment:

- 1. The FMCA will increase their contribution of gross membership revenues from 10% to 25%.
- 2. The FMCA will increase their contribution of gross museum store revenue from 10% to 25%.

In addition to these changes the City will continue to receive income from admission, education programs and rental of the facility and plaza.

Dannielle Mauk

Cultural and Events Manager

Director of Parks and Recreation

Attachments: A – Museum Operation Agreement

B – Amendment #1 to the Agreement

# MUSEUM OPERATION AGREEMENT

#### MUSEUM OPERATION AGREEMENT

THIS OPERATION AGREEMENT is made and entered into this 15<sup>th</sup> day of June, 2004, by and between the CITY OF FULLERTON, a municipal corporation (hereinafter referred to as "CITY") and the FULLERTON MUSEUM CENTER ASSOCIATION, a non-profit 501(c)3 organization, organized and existing under the laws of the State of California, and the United States Internal Revenue Service (hereinafter referred to as "ASSOCIATION").

#### R-E-C-I-T-A-L-S

WHEREAS, on March 7, 1975, CITY and ASSOCIATION entered into an Operation Agreement for the Fullerton Museum Center (hereinafter referred to as the "Museum") on that certain real property located at 301 North Pomona Avenue, Fullerton, California (hereinafter referred to as the "Premises"); and

WHEREAS, said Operation Agreement was extended for a five (5) year term on May, 1979 and subsequently amended on October 18, 1979, November 2, 1982, April 5, 1983, June 3, 1986, and October 6, 1998; and

WHEREAS, other agreements are being entered into contemporaneously herewith between the CITY and the North Orange County Community College District (hereinafter referred to as the "District") relative to the lease of the Premises; and

WHEREAS, CITY desires to appoint ASSOCIATION as its agent to jointly program and operate the Museum pursuant to the terms and conditions of the lease between CITY and District;

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

# ARTICLE 1 PRELIMINARY MATTERS

### 1.01 Definitions

As used in the Agreement, the following terms shall have the following meanings:

- (a) "Board" means the Board of Trustees of the ASSOCIATION.
- (b) "Museum" means the real property commonly known as the Fullerton Museum Center, located at 301 N. Pomona Avenue, Fullerton CA 92832.

- (c) "Director" means the Supervisory staff person retained by the CITY to manage and operate the Museum Center.
- (d) "CITY Clerk" means the CITY Clerk of the CITY of Fullerton.
- (e) "CITY" means the CITY of Fullerton, California, a municipal corporation of the State of California.
- (f) "CITY Attorney" means the CITY Attorney of the CITY.
- (g) "CITY Council" means the CITY Council of the CITY.
- (h) "CITY Manager" means the CITY Manager of the CITY.
- (i) "Fiscal Year" means July 1 through June 30.
- (j) "ASSOCIATION" means the Fullerton Museum Center Association, a California non-profit public benefit corporation.
- (k) "Fee Resolution" means the CITY of Fullerton document establishing rental fees and use guidelines for citizen and businesses, and other organizational use of public facilities.

### 1.02 Status of ASSOCIATION

- (a) By its execution of the Agreement, ASSOCIATION warrants that it is duly incorporated under the laws of the State of California and that true and correct copies of its Articles of Incorporation (EXHIBIT A) and Bylaws (EXHIBIT B) and a true and correct listing of ASSOCIATION'S trustees and officers and their terms of office (EXHIBIT C), certified as such by the ASSOCIATION's Secretary, have been filed with the CITY Clerk.
- (b) By its execution of the Agreement, CITY accepts and agrees to the organization of the ASSOCIATION as set forth in the aforementioned Articles of Incorporation and Bylaws.

# 1.03 Compensation of Board Members and Meetings

- (a) The members of the Board shall serve without compensation other than reimbursement for expenses incurred by them in the course of the performance of services for the ASSOCIATION when authorized by the Board and in conformance to ASSOCIATION Bylaws.
- (b) Regular meetings of the Board are subject to the bylaws of ASSOCIATION.
- 1.04 Changes in Directors and Officers, Articles and Bylaws

ASSOCIATION shall notify the CITY Clerk within 30 days of any change in the membership of the Board and any change in the officers of ASSOCIATION. Any amendment of ASSOCIATION's Articles of Incorporation or Bylaws shall be filed with the CITY Clerk.

## 1.05 CITY Representation on the Board

The CITY Manager or his designated representative shall be a liaison to the ASSOCIATION Board and shall participate in the discussions of the Board to the same extent as any member of the Board. The ASSOCIATION shall give the CITY Manager or his designated representative notice of all meetings of the Board, which notice shall include all relevant materials. The CITY Council shall have one designated representative on the Board. This representative shall have the same authority to make, second, or vote on motions at the meetings of the Board.

# 1.06 CITY Residents on the Board

A majority of the Board shall be residents of Fullerton, CA. If the number of Fullerton, CA residents become less than a majority, the next member appointed to the Board shall be a resident of Fullerton, CA.

### ARTICLE 2 TERM

# 2.01 Termination of Prior Agreements

The Operation Agreement dated October 6, 1998, is hereby canceled effective July 1, 2004.

### 2.02 Term of Agreement

- (a) The terms of the Agreement shall be for ten (10) years, effective July 1, 2004. CITY and ASSOCIATION shall have the option of extending the Agreement for an additional ten years under the same terms and conditions contained herein by mutual consent of both parties. This Agreement may otherwise be terminated at an earlier date as herein provided.
- (b) Notwithstanding any other provision of this Agreement to the contrary, this Agreement is conditioned upon CITY obtaining and maintaining in effect a lease of the premises from District, otherwise this Agreement may be terminated by either party without further rights against or liability to the other.

# ARTICLE 3 PERSONAL PROPERTY

# 3.01 Loaned Property

All personal property located at the Center, or otherwise reserved for Center purposes, or donated to the ASSOCIATION for Center purposes, shall become CITY property. Said personal property shall include, but not be limited to, furnishings and equipment. Loaned property for exhibits or temporary ASSOCIATION use shall not become CITY property under these terms.

## 3.02 Care of Personal Property

- (a) CITY shall maintain, at its expense, all equipment, furnishings and trade fixtures required for maintenance and operation of the Center, including, but not limited to, property loaned to the CITY by the ASSOCIATION, reasonable wear and tear excepted.
- (b) CITY shall not sell or otherwise dispose of any property loaned to it by the ASSOCIATION except by returning same to the CITY. CITY shall return said property to the ASSOCIATION upon termination of the Agreement. CITY shall pay ASSOCIATION the reasonable market value of any property not returned.
- (c) ASSOCIATION shall not sell or otherwise dispose of any property loaned to it by the CITY except by returning same to the ASSOCIATION. ASSOCIATION shall return said property to the CITY upon termination of the Agreement. ASSOCIATION shall pay CITY the reasonable market value of any property not returned.
- (d) All property or improvements obtained through donations or purchase by the ASSOCIATION are to be registered as CITY property at the end of the fiscal year in which the property was obtained.

### 3.03 Exhibit Property

Permanent exhibit objects obtained through donation or purchase by the ASSOCIATION are to remain ASSOCIATION property, subject to provisions contained in Article 9.

> ARTICLE 4 USE

### 4.01 General Use

- (a) The CITY shall have authority and shall be financially responsible for all operations at the Center, except as otherwise provided herein.
- (b) It is the intention of the CITY and the ASSOCIATION that the Center be operated in a manner consistent with the guidelines of the American Association of Museums.
- (c) The CITY and the ASSOCIATION shall operate the Center for the public under the name of the "Fullerton Museum Center."

# 4.02 Specific Operations and Programming

- (a) Prior to March first (1st) of each calendar year of the Term, an exhibit and programs plan for the following fiscal year shall be prepared by the ASSOCIATION in conjunction with the CITY Council's annual consideration of funding.
- (b) CITY and ASSOCIATION shall jointly pursue regular promotion of all programs including but not limited to press releases, public service announcements, and notices to school districts.
- (c) In addition to normal Center operations, ASSOCIATION may conduct or permit the following activities at the Center:
  - (1) Activities, including but not limited to rentals and special events, designed to raise funds for the benefit of the Center or promote Center interests.
  - (2) Meetings of persons involved in Center and ASSOCIATION activities.
  - (3) The operation of a museum store pertaining to Center exhibits and programs or otherwise having artistic, scientific, cultural or historical interest.
  - (4) Food service and/or catering to accommodate all activities including, but not limited to, all programs and special events.
  - (5) The licensing of the Center by the State of California for the sale of alcoholic beverages as allowed by the Grant Deed, the State of California Alcohol and Beverage Control, and applicable CITY codes.
- (d) In addition to normal Center operations, CITY may conduct or permit the following activities at the Center:

- (1) Activities, including but not limited to rentals and special events, designed to raise funds for the benefit of the Center or promote Center interests.
- (2) Meetings of persons involved in Center or CITY activities.
- (3) Food service and/or catering to accommodate all activities including, but not limited to, all programs and special events.
- (4) Rental of the facility to approved individuals or organizations as outlined in the CITY's fee resolution.

### 4.03 Exhibits

- (a) ASSOCIATION shall have control over the selection of exhibits, consistent with the mission of the Association. CITY staff shall coordinate and advise ASSOCIATION on exhibit selection. Exhibit display is subject to the Right of First Refusal Policy (EXHIBIT D). Appropriate CITY staff, in coordination with the ASSOCIATION shall be responsible for the interior design, exhibit design, and decoration of the buildings at the Center as appropriate for the accommodation of exhibits.
- (b) ASSOCIATION shall provide continuous programming, consistent with the museum's mission, with at least four (4) exhibitions annually at Museum. Working with CITY staff, ASSOCIATION shall be responsible for the investigation of suggested exhibitions and programs, final review and selection of exhibitions, programs, and activities. Exhibits and programs are to be produced consistent with the Museum's stated mission.
- (c) The ASSOCIATION shall be allowed to establish a permanent collection focused specifically on the subject of Leo Fender and his historical ties to Fullerton. The Association may exhibit the items from the permanent collection as part of a Leo Fender Gallery. All permament collection acquisitions are subject to prior approval by the Museum Director, or his designee.

### 4.04 Fund Raising

- (a) ASSOCIATION agrees to solicit corporate and other private funding and general financial support to support the mission of the Museum, and to promote public awareness, membership, participation and community support for the Museum.
- (b) ASSOCIATION agrees to implement an annual fund raising program to support exhibitions and educational programs. CITY staff shall

provide support, however, it shall be the responsibility of the ASSOCIATION's Board of Directors for the success of the annual fund raising activities.

(c) ASSOCIATION may contract with a person or persons for fund raising purposes, subject to conditions described in Article 5, Section 5.01 (b). The position shall coordinate with CITY staff at all times.

## ARTICLE 5 PERSONNEL

#### 5.01 Employment Practices

- (a) Except as otherwise provided herein, CITY shall be responsible for the terms and conditions of employment of Center staff including without limitation, all wages, salaries, benefits, termination's, and expenses for any claims or liability arising out of the CITY's employment practices. Under no circumstances shall an employee of the CITY be considered an ASSOCIATION employee.
- (b) Except as otherwise provided herein, ASSOCIATION may employ independent contractors, upon approval of CITY, to perform "non-regular" duties associated with the ASSOCIATION's responsibilities as described herein. All fees and expenses for independent contractors are the responsibility of the ASSOCIATION. Under no circumstances shall an independent contractor for the ASSOCIATION be considered an employee of the CITY. Any and all independent contractors utilized by the ASSOCIATION shall be required to conform with the Standard Insurance Requirements as established by the Risk Management division of the CITY. ASSOCIATION shall be responsible for ensuring that appropriate insurance is in evidence and has been approved by CITY prior to the commencement of any work by independent contractors.
- (c) ASSOCIATION shall comply with all applicable Federal, State, and local laws, rules, and guidelines in regards to all recruitment, contracts, supervision, evaluation, and termination in all aspects of contracting, including, but not limited to:
  - (1) obtaining, at its own expense, all necessary permits and licenses; giving all necessary notices; paying all fees required by law; preserving the public health and safety; and, providing copies of all such permits and licenses to the CITY; and, maintaining all appropriate permits and licenses during the term of the employment.

- (2) not engaging in discrimination in hiring, selection, retention, promotion or treatment of any person employed by the ASSOCIATION as a result of the Agreement. Discrimination means any act that unlawfully differentiates treatment intended or unintended, based on age, physical or mental disability, race, creed, color, religion, gender, marital status, or national origin.
- (c) ASSOCIATION shall carefully select and train its independent contractors in a manner consistent with generally accepted museum standards and practices.
- (d) ASSOCIATION shall not knowingly allow any independent contractor, who is under the influence of alcohol or illegal substance while performing his duties, on the premises. Nor shall the ASSOCIATION continue the employment of a contractor determined to be dishonest or incompetent, such determination to be done in accordance with State and Federal employment laws.

#### 5.02 Center Director

CITY shall hire a Center Director who shall employ and supervise Center personnel in such a manner as to ensure the maintenance of a high standard of service to the public under the provisions of the Agreement. CITY shall retain the authority to employ, terminate, evaluate and otherwise supervise the Center Director.

## ARTICLE 6 MAINTENANCE, REPAIRS AND CAPITAL IMPROVEMENTS

#### 6.01 Water, Sanitation, and Utilities

During the term of the Agreement CITY shall provide for water and sanitation services for the Center.

#### 6.02 Routine Maintenance and Repairs

- (a) CITY shall operate, maintain and manage the Center in a competent and efficient manner comparable to other well-managed and well-maintained operations of a similar nature. CITY shall maintain the Center in a safe, clean, wholesome, and sanitary condition, and provide routine repairs as herein required.
- (b) CITY shall provide landscape, tree, preventative, and custodial maintenance service for the Center as necessary to maintain the facility and grounds in a safe, clean, sanitary and attractive condition at all times.

#### 6.03 Capital Maintenance and Repairs

- (a) CITY shall be responsible for all capital maintenance and repairs of the Center, including, but not limited to, structural components, roof, electrical system (excluding fixtures), main water lines, dry rot, fungus, and termite damage, gas lines, sidewalks, plumbing system (excluding fixtures), main electrical lines (excluding fixtures), and parking lot.
- (b) CITY shall consider and perform needed capital maintenance and repairs in accordance with CITY's approved procedures for handling capital items and/or emergency situations.

#### 6.04 Waiver

ASSOCIATION waives the right to make repairs at the expense of CITY and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of California relating thereto; and further agrees that if and when repairs, alterations, additions or betterment shall be made by it as required herein, it shall promptly pay for all labor done or materials furnished and shall keep the Center free and clear of any lien or encumbrance of any kind whatsoever.

#### 6.05 Public Areas

- (a) CITY shall maintain or cause to be maintained, including repair and replacement as necessary, public areas serving the Center but outside the Center property, including, but not limited to public roadways and main utility systems.
- (b) Any and all improvements to the Center shall be the property of CITY.

## ARTICLE 7 FISCAL TERMS

#### 7.01 Fiscal Terms

(a) Subject to conditions described herein, the following fiscal terms shall apply:

In addition to other responsibilities described herein, CITY shall be financially responsible for providing maintenance and repair on the building and grounds at a level to be determined by CITY; including, but not limited to, maintenance and repair of the building and grounds, liability coverage for acts of both CITY AND ASSOCIATION Board of Trustees to the extent specified in ARTICLE 8,

and utility services including telephone, water, gas, and electricity.

CITY shall be financially responsible for the annually approved costs of exhibition production, subject to approval by the CITY Council. This annual amount includes, but not limited to, costs for rental, shipping, signs, curatorial fees, postage office supplies, and any other related charges for the exhibitions and educational programs.

ASSOCIATION shall be financially responsible for supplementing any and all necessary exhibition and educational costs above and beyond the annual amount approved through the CITY's annual budget process.

ASSOCIATION shall be financially responsible for temporary exhibit and permanent collection insurance, membership expenses (including exhibit announcements and invitations), receptions, food service, museum store stock and expenses.

- (b) Distribution of shared revenues shall be determined in accordance with the annual budget approved by the CITY COUNCIL. Subject to conditions described herein, the following fiscal terms shall apply:
  - 1. CITY shall retain all admission income revenues at an amount set by the CITY in accordance to CITY's annual budget. Prior to approval of the CITY's annual budget, the ASSOCIATION may request ticket income over and above said amount to support special programs or exhibits. All requests by the ASSOCIATION for admission income shall require approval by the CITY Council.
  - 2. CITY shall retain all education program income at an amount set by the CITY in accordance with the CITY's annual budget. Prior to approval of the CITY's annual budget, the ASSOCIATION may request education program income over and above said amount to support special educational programs. All requests by the ASSOCIATION for education income shall require approval by the CITY Council.
  - 3. CITY shall retain all income from rental of the facility as determined by the CITY fee resolution document.
  - 4. ASSOCIATION shall retain all gross revenues from membership and membership activities. Prior to the end of each fiscal year of the term, ASSOCIATION shall pay to the CITY ten percent (10%) of the gross membership

- revenues to CITY, subject to any and all conditions described herein.
- 5. ASSOCIATION shall retain all gross revenues from museum store sales to the ASSOCIATION. Prior to the end of each fiscal year, ASSOCIATION shall pay to the CITY ten percent (10%) of the gross museum store revenue to CITY, subject to any and all conditions described herein.
- 6. ASSOCIATION shall retain all income from membership fundraising activities, subject to any and all conditions described herein.
- 7. ASSOCIATION shall retain all income from food service fundraising activities, excluding food service income derived from the operation of the museum store, subject to any and all conditions described herein.
- 8. ASSOCIATION shall retain all income from endowment fundraising activities, subject to any and all conditions described herein.
- 9. ASSOCIATION shall retain all interest income from endowment fundraising activities, subject to any and all conditions described herein.
- 10.ASSOCIATION shall retain all income from fundraising pledges and/or donations, subject to any and all conditions described herein.
- 11.CITY and ASSOCIATION shall consider under separate agreement, any and all revenue received from grants. Said agreement shall recognize any and all terms and restriction of said grant, and shall be subject to conditions described herein.
- (c) Admission ticket prices shall be set based on recommendation by the ASSOCIATION. All admission prices shall be subject to review and approval by CITY.

#### 7.03 Annual Funding Procedures

Said amount of annual CITY funding shall be determined by CITY during it annual budget process.

#### 7.04 Quarterly, Annual, and Other Reports

On or before March first (1st) of each year, ASSOCIATION shall submit to the CITY Manager's representative:

- (a) A complete set of <u>financial statements</u> for the preceding <u>fiscal</u> <u>year</u> which have been prepared by a certified public accountant approved by the CITY and in accordance with standards set forth by the American Institute of Certified Public Accountants; and,
- (b) A program plan for the ensuing fiscal year, including a proposed budget expenditures and expenses and exhibition schedule.

#### 7.05 Financial Records

- (a) ASSOCIATION shall keep, or cause to be kept, true, accurate and complete records, including a general ledger, an income statement, and a balance sheet prepared in accordance with generally accepted accounting principles, such that relevant financial statements are generated on a monthly basis.
- (b) All account books, statements, balance sheets and supporting documents shall be retained by ASSOCIATION for a period of four (4) years after the end of the accounting year to which they pertain.

#### 7.06 Inspection and Audit

- (a) At least every third (3rd) year thereafter, ASSOCIATION, at its sole expense, shall have its financial statements audited by an independent certified public accountant approved by the CITY and in accordance with standards set forth by the American Institute of Certified Public Accountants.
- (b) Upon reasonable notice, CITY or its designated representative shall have the right to review and/or audit all ASSOCIATION records, at CITY's sole expense.

## ARTICLE 8 INDEMNITY AND INSURANCE

#### 8.01 Indemnification

(a) ASSOCIATION agrees to hold harmless the CITY, its officers, agents, employees, and volunteers from all loss, cost, and expense arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability or damage to property sustained or claimed to have been sustained arising out of activities of the ASSOCIATION or those of any of its officers, agents, employees, or volunteers, whether such act is authorized by this Agreement or not. ASSOCIATION further agrees to waive all

rights of subrogation against CITY. The provisions of this Article do not apply to any damage or loss caused by the sole negligence or willful misconduct of the CITY or any of its agents or employees.

(b) CITY agrees to defend, indemnify, and hold harmless the ASSOCIATION, its officers, agents, employees, and volunteers from all loss, cost, and expense arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability or damage to property sustained or claimed to have been sustained arising out of activities of the CITY or those of any of its officers, agents, or employees, whether such act is authorized by this Agreement or not. CITY further agrees to waive all rights of subrogation against ASSOCIATION. The provisions of this Article do not apply to any damage or loss caused by the sole negligence or willful misconduct of the ASSOCIATION or any of its agents, employees, or volunteers.

#### 8.02 Insurance Requirements

ASSOCIATION shall, throughout the term of this Agreement and at its own cost and expense, maintain a policy or policies of insurance to provide Fine Arts Property coverage for the agreed replacement costs of any and all exhibitions. Such insurance shall be kept in force at all times and shall be of sufficient limits and scope to meet the American Association of Museums accreditation standards and lender's requirements.

#### 8.03 Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to the CITY with current BEST'S ratings of no less than B+, Class X. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the CITY, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if ASSOCIATION evidences the requisite need to the sole satisfaction of the CITY.

#### 8.04 <u>Verification</u> of Coverage

ASSOCIATION shall furnish the CITY with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, ASSOCIATION shall furnish certified copies of all policy endorsements required herein. The CITY reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

#### 8.05 Modifications and Waivers

Any modification or waiver of the insurance requirements herein shall only be made by mutual written agreement.

#### 8.06 All Risk Property Insurance

- (a) The CITY shall maintain, as part of its property insurance program, All Risk Property insurance for the Center, which is equivalent to coverage maintained for other CITY property, but excluding coverage for earthquake and flood losses, as part of CITY's property insurance package. Such insurance shall include coverage for the authorized improvements and betterments.

  ASSOCIATION shall notify the CITY immediately upon completion of any and all significant improvements or betterments to the Center.
- (b) The CITY shall maintain responsibility for any deductibles on the All Risk Property insurance and for uninsured damage to the Center except when such damage or loss is caused by the sole negligence or willful misconduct of the ASSOCIATION, its directors, officers, employees, agents or volunteers.

### ARTICLE 9 DEFAULTS AND REMEDIES

#### 9.01 Nature of Default

Failure by either party to perform any term or provision of the Agreement shall constitute a material breach of the agreement. Failure of the breaching party to remedy said breach within thirty (30) days (or earlier if required to ensure public health and safety), following notice to do so by the non-breaching party shall constitute a default. The foregoing notwithstanding, should the breach not be curable within said thirty (30) days, then the breaching party shall have a reasonable extension of time provided it has begun and diligently pursues to completion said cure.

#### 9.02 Remedies

In case of default, the parties hereto may exercise any one or more of the following remedies:

(a) To require the matter be settled by binding arbitration by giving the other party written notice of same. Within ten (10) working days of said written notice, each party shall select an Arbitrator associated with the American Arbitration Association or an otherwise certified Arbitrator qualified to mediate such matters,

and those Arbitrators shall then select a third Arbitrator. The three (3) Arbitrators shall apply California law and shall provide written findings supporting their decision within thirty (30) days of the conclusion of the arbitration hearing(s). The prevailing party shall be reimbursed by the other party for all of its reasonable costs and attorneys' fees related to the arbitration.

- (b) To terminate the Agreement by tendering the other party, sixty (60) days advance written notice, which notice shall specify the effective date of termination and the default causing same. Termination shall be available only as a remedy for default. Upon termination:
  - 1. CITY shall have no further obligation to provide funding or other assistance to ASSOCIATION pursuant to the Agreement.
  - 2. ASSOCIATION shall vacate the Center and deliver possession thereof to CITY, including returning all keys and combinations to the CITY.
  - 3. ASSOCIATION shall return to CITY possession of all personal property.
  - 4. All assets donated to the ASSOCIATION for Center purposes shall be delivered to the CITY to be held in trust for the donor or lender and used solely for the purpose for which the donation or loan was made. Assets from the Association endowment fund or permanent collection shall be likewise used solely for the purpose for which the donation was made, including the option to distribute the remaining assets to a non-profit agency, museum, foundation, or corporation, which is organized and operated exclusively for charitable or education purposes and which has established it tax exempt status under Section 501 © 3 of the Internal Revenue Code and which is qualified for exemption from taxation under Section 23701(d) of the California Revenue and Taxation Code.
  - 5. ASSOCIATION within a reasonable amount of time shall submit a final accounting to the CITY, and a final settlement of funds, either due to or from the CITY, shall be made.
  - 6. CITY may, at its option, choose other remedies available herein, or available by law.
- (c) The rights and remedies of the parties are cumulative, and the exercise by either party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different

times, of any other rights or remedies, as provided herein or by law, for the same default or any other default.

## ARTICLE 10 GENERAL PROVISIONS

#### 10.01 Representatives

- (a) All actions authorized to be taken by CITY pursuant to the Agreement, without specification in the Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of CITY by the CITY Manager. The CITY Manager may, by written notice to ASSOCIATION, designate any officer of CITY as his representative with respect to any specified authority given to the CITY Manager by the Agreement, and in such event the actions of such officer within the scope of such authority shall have the same effect as if taken by the CITY Manager.
- (b) All actions authorized to be taken by ASSOCIATION pursuant to the Agreement, without specification in the Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of the ASSOCIATION by the Board or by such officer of ASSOCIATION as may be designated by resolution of the Board.
- (c) The officers designated as representatives of CITY and ASSOCIATION pursuant to this section may, on behalf of the parties hereto, enter into such subordinate arrangements and agreements as are consistent with the terms and conditions of the Agreement.

#### 10.02 Right of Inspection

The CITY shall have the right to enter and inspect the facilities at any and all reasonable times, provided said entry and inspection is not disruptive to operation of the Center.

#### 10.03 Taxes

The ASSOCIATION shall not be responsible for property taxes, fees, or assessments levied against the premises by any governmental agency.

The CITY shall not be liable for any taxes, fees, licenses, or assessments arising out of ASSOCIATION's activities at the Center.

#### 10.04 Notices

Notices (which includes, but is not limited to, requests, demands, approvals, statements, reports, acceptances, consents, and waivers)

given by one party to the other shall be in writing and shall be deemed given when either personally delivered or when deposited in the postal system of the United States of America, first class mail, postage prepaid, to the following addresses or such other addresses as it may designate hereafter by notice:

#### (a) To CITY:

CITY Clerk
CITY of Fullerton
303 West Commonwealth Avenue
Fullerton, California 92832

#### (b) To ASSOCIATION:

President
Fullerton Museum Center ASSOCIATION
301 North Pomona Avenue
Fullerton, California 92832

#### 10.05 Assignability

The rights and duties of the ASSOCIATION under the Agreement may not be assigned or delegated without the prior written approval of CITY.

#### 10.06 Partial Invalidity

If any term, covenant, condition, or provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

#### 10.07 <u>Interpretations</u>

Any Index, Summary, and the captions of the articles and sections of the Agreement have been inserted for convenience in reading the Agreement and are neither a part of the terms of the Agreement nor in any way define, limit, construe or describe the scope or intent of any provision of the Agreement. Whenever required by the context of the Agreement, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.

#### 10.08 Waiver of Rights

(a) The failure or delay of either party to insist upon strict enforcement of any of the terms herein and the acceptance of any

services or the payment of any money by either party shall not operate or be deemed a waiver of any provision of the Agreement or any right or remedy (including indemnity) that either party may have and shall not be deemed a waiver of any subsequent or other breach of any term herein.

(b) Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

#### 10.09 Entire Agreement

The Agreement, including any exhibits, schedules, riders and addenda attached hereto and forming a part hereof, supersedes any and all other agreements, either oral or in writing between the parties hereto; and constitutes the entire, complete and exclusive agreement of the parties hereto. Each party to the Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein. No oral or other agreements, or modifications to the Agreement, including a waiver of this clause, shall be valid and enforceable unless in writing and signed by the parties hereto; and, any other attempted amendment shall be void.

#### 10.10 Force Majeure

If CITY's or ASSOCIATION's performance of any covenant or term of the Agreement is altered, delayed, or prevented by some unforeseeable, extraordinary circumstance beyond the control of either party, then performance of said covenant or term shall be excused to the extent that said circumstances altered, delayed or prevented same; and, said failure to perform shall not relieve the other party hereto from the performance of any of its duties herein. Said circumstances include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather condition.

#### 10.11 <u>Survi</u>val

All representations, warranties, and covenants to indemnify and hold harmless shall survive the termination of the Agreement.

#### 10.12 Time of the Essence

Time is of the essence of each and every provision of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the day and year first above written.

CITY OF FULLERTON

Mike Clesceri, Mayor

ATTEST:

FULLERTON MUSEUM CENTER
ASSOCIATION BOARD OF TRUSTEES

Beverly White, CITY Clerk

Dani-Sue Dittmar, Secretary

APPROVED AS TO FORM:

Richard B. Jones, CITY Autorney

Susan Hunt, CITY Director of Community Services

# AMENDMENT #1 TO THE MUSEUM OPERATION AGREEMENT

#### AMENDMENT #1 MUSEUM OPERATION AGREEMENT

THIS AMMENDMENT is made and entered into this 16th day of October, 2010, by and between the CITY OF FULLERTON, a municipal corporation (hereinafter referred to as "CITY") and the FULLERTON MUSEUM CENTER ASSOCIATION, a non-profit 501(c)3 organization, organized and existing under the laws of the State of California, and the United States Internal Revenue Service (hereinafter referred to as "ASSOCIATION").

#### WITNESSETH

WHEREAS, on March 7, 1975, CITY and ASSOCIATION entered into an Operation Agreement for the Fullerton Museum Center (hereinafter referred to as the "Museum") on that certain real property located at 301 North Pomona Avenue, Fullerton, California (hereinafter referred to as the "Premises"); and

WHEREAS, Notwithstanding any other provision of this Agreement to the contrary, this Agreement is conditioned upon CITY obtaining and maintaining in effect a lease of the premises from District, otherwise this Agreement may be terminated by either party without further rights against or liability to the other.

WHEREAS, CITY has appointed ASSOCIATION as its agent to jointly program and operate the Museum pursuant to the terms and conditions of the lease between CITY and District;

WHEREAS, the City and the Association entered into an "Operation Agreement" (hereinafter "Agreement") for ten (10) years, on July 1, 2004 for the Museum described above. This amendment supersedes and nullifies the Agreement;

WHEREAS, both parties have agreed to amend the terms of the Agreement by way of this amendment ("Amendment"). In all other respects not modified herein, the terms of the Agreement shall remain in effect. The term of this Amendment shall be the same as the Agreement and shall be terminated or shall expire with the termination or expiration of the Agreement. To the extent this Amendment modifies or conflicts with terms in the Agreement, this Amendment shall control and shall supersede those modified or conflicting provisions of the Agreement.

NOW, THEREFORE, in consideration of the promises and the respective and mutual agreements contained herein and in exercise of the rights reserved to the parties in Article 7, "Fiscal Terms" of the Agreement, the Parties herby amend the Agreement in the following respects:

- 1. Section 7.01(b) 4. ASSOCIATION shall retain all gross revenues from membership and membership activities. Prior to the end of each fiscal year of the term, ASSOCIATION shall pay to the CITY twenty five percent (25%) of the gross membership revenues to CITY, subject to any and all conditions described herein.
- 2. Section 7.01 (b) 5. ASSOCIATION shall retain all gross revenues from museum store sales to the ASSOCIATION. Prior to the end of each fiscal year, ASSOCIATION shall pay to the CITY twenty five percent (25%) of the gross museum store revenue to CITY, subject to any and all conditions described herein.

The remaining sentences in Section 10.1 in the section shall remain in full force in effect.

#### 5. Section 11.1 shall be amended as follows:

#### Section 11.1 Notice

City:

Beverley White, City Clerk

**Fullerton City Council** 

City of Fullerton

303 W. Commonwealth Ave.

Fullerton, CA 92832 Attention: City Council

Association:

**Fullerton Museum Center Association** 

301 N. Pomona Fullerton, CA 92832

Attention: Jim Ranii, President

IN WITNESS WHEREOF, the Parties have executed this Operation Agreement Amendment the day and year first above written.

| CITY:<br>City of Fullerton                            | ASSOCIATION: Fullerton Museum Center Association |
|---|--|
|   | JM Lane  |
| Don Bankhead, Mayor                                   | Jim Ranii, FMCA President                        |
| APPROVED AS TO FORM:  Righard D. Jones, City Attorney | Linda Parton, FMCA Treasurer                     |
| ATTEST:   |  |
|   |  |



## PARKS AND RECREATION COMMISSION AGENDA

MEETING DATE: NOVEMBER 8, 2010

TO: PARKS AND RECREATION COMMISSION

FROM: JOE FELZ, DIRECTOROF PARKS AND RECREATION

SUBJECT: OPTIONS FOR THE SKATE PARK AT INDEPENDENCE PARK

#### **PURPOSE**

The purpose of the item is to discuss options for the skate park located at Independence Park.

#### RECOMMENDATION

Staff is recommending that the Parks and Recreation Commission review options for the future of the skate park.

#### PROPOSED COSTS

Proposed costs could range from \$10,000 to \$225,000

#### **DISCUSSION**

The skate park at Independence Park opened in December 2000. The original intention was to attract young skaters, primarily elementary and junior high school ages. Since opening, the skate park attracted primarily older teen and adult skaters, due to the fact the park features are designed for more accomplished skaters. Specifically, the depth of the bowl area and degree of the slopes at entry points require a more advanced degree of skills, strength, and physical maturity.

Over the course of the last several years, the skate park became a location for a variety of negative activities. Aside from the fact that the skate park was not attractive to younger persons as intended, there are several other operational and design features contributing to the current situation. In summary, most of the negative behaviors documented at the park were attributed to two variables: the design/location of the skate park, and the liability constraints that require an "all or nothing" (i.e. full staffing or unsupervised) approach to monitoring the activities at the park. Due to the numerous illegal activities that were occurring at the skate park, it was closed in March 2010 on a

temporary basis while staff put together various alternatives for the future of the facility. A temporary 8' fence was installed and signs put up stating that the park is closed. Since the temporary closure, the on-going costs of repairs to the fence have averaged about \$1,000 a month.

#### Park Design and Location Factors

The design and location of the skate park provide a near perfect "habitat" for negative and illegal activities. Being located in the rear area of the park, and largely hidden from view by the 2-story indoor racquetball facility, both Parks and Recreation staff and Police Officers were unable to effectively view/police the park when undesirable activities were occurring. In addition, staff and police must travel a long distance to reach the park. The access paths to the park were observable by skate park users from a long distance, and if illegal activities were occurring, items could be covered-up and/or thrown away. When Parks and Recreation staff did their hourly patrols of the entire park during open hours, the element participating in undesirable activities would stop momentarily. Likewise, when Police would arrive, participants had time to either throw-away or otherwise destroy evidence of illegal activities, and/or leave the area via the adjacent railroad track.

Compounding the ability to effectively manage the skate park is that there is an "escape" route over the railroad tracks to the north. These "escape" access points are essentially uncontrollable (within reasonable measures and costs).

Because of the low fence height (4 feet) around the skate park perimeter, there is no way to close the skate park, to establish regular operating hours, or to close for periods of time. This design feature is a significant contributing factor to the extensive amount of graffiti activity that occurs in the skate park. Maintenance Services Department records indicate that over \$14,000 was spent last year to remove graffiti in the skate park. For the most part, new graffiti was found on a daily basis.

#### **Operational Factors**

For both liability and budget reasons, skate parks built during this time were built to be operated with no staff supervision. As long as signage was posted with rules and required equipment, the city's liability was minimal. Fully staffing the skate park brings with it additional costs and responsibilities/liabilities. If staffed full-time, full compliance and enforcement is the responsibility of the City staff. There was never any on-site staff supervising the skate park. Independence Park staff monitored the skate park similar to other activity areas at the park (handball courts, tot lot, etc.) with hourly checks.

Over the course of the last several years, the park became a place for varying levels of negative, and frequently illegal, activities. As negative activities increased, Parks and Recreation staff worked with the Police Department in an attempt to eliminate the undesirable activities. These activities included: illegal drug sales (primarily marijuana); illegal drug consumption; alcohol consumption; public urination; graffiti, and; destruction

of public property. The skate park environment was one of intimidation by a select few of the adult age skate park users, with a set of unwritten "rules" about use of the park. Just prior to the closure of the skate park, officers issued numerous citations over the course of several weeks. Of more concern was the level of illegal activity discovered by an Undercover Officer assigned to work at the park.

#### Options for the future

During the temporary closure, staff has researched several options and estimated costs associated with each. There are several options available that range from keeping the skate park intact, re-opening in a limited fashion, to demolishing the skate park and replacing with alternative uses. Below are the options listed with approximate costs attached:

#### 1. Reopen the skate park with supervision

Although this does not address the undesirable elements that could return to the skate park, opening it with supervision does make this a viable option. Staff could open the skate park a few hours per week during the school year with extended hours in the summer. Suggested hours for winter would be 3 p.m. to 5 p.m. Monday through Friday and 12 p.m. to 4 p.m. on Saturdays. During the summer, the suggested hours would be 1 p.m. to 6 p.m. daily. In order to make the skate park able to be supervised, there would be some one-time costs to upgrade and secure the skate park.

| Permanent fence so park is secured when closed | \$42,000        |
|--|-----------------|
| Other minor site improvements                  | \$ 2,500        |
| Remove existing graffiti                       | \$10,000        |
| Install security camera                        | \$10,000        |
| On-going staffing costs                        | <u>\$21,710</u> |
|  | \$44,210        |

Option – charge an entry fee (\$3 per entry – same as entry to the pool) to partially cover on-going cost – potential revenue is estimated at \$10,000 - \$15,000

#### 2. Contract out the operations of the skate park

There are contractors that could come in and operate the skate park for a fee. The one that we met with was not interested in operating our skate park, and it is likely to attract a contractor, we would have to do the improvements listed in option #1.

#### 3. Reopen the skate park with no supervision

To reopen the skate park with no supervision is not recommended. It is likely that the same elements of undesirable activities would return to the skate park in a very short period of time. An option would be to install a security camera to monitor the skate park, but as in the past, police enforcement is difficult due to the location of the skate park.

Cost of security camera

\$10,000

4. Demolish the skate park and replace with open space (irrigation and turf)

If the skate park is going to be closed permanently, staff would recommend that it be demolished since there are on-going repair costs related to the temporary fence that gets vandalized by skaters 'breaking in' to the skate park. After the demolition, one option would be to put turf in that area to create additional open park space.

| Demolition of skate park                               | \$ 8,650 |
|--|----------|
| Soil amendments and prep, irrigation and hydro-seeding | \$ 7,100 |
|  | \$15,750 |

5. Demolish the skate park and replace with aggregate.

The other option after demolition would be to replace with aggregate. This would save on water and the cost of installing turf however the space would not be usable park space.

Demolition of skate park and replace with aggregate.

\$12,200

6. Demolish the skate park and replace with other amenities.

There are various options that staff can explore that would provide a very different type of activity and participant in that area. Per your direction, we will explore a variety of options.

7. Demolish the current skate park and provide a 'skate spot' in a more visible location in the park.

A "skate spot" is a relatively new concept for skate amenities. They are small areas that range from a few skate elements integrated into the existing landscape to larger areas that can accommodate up to a dozen or so skaters at a time. It provides a 'street' skating experience in a controlled environment that becomes an interactive public space. The skate spot would provide an outlet for the younger beginning skater and be in a more visible location on the park which would reduce the likelihood of undesirable behavior occurring.

Design and installation of a "skate spot"

\$150,000 - \$250,000

#### 8. Continue with the temporary closure.

of Parks and Recreation

Keep the skate park closed with the temporary fencing pending completion of the upcoming Independence Park master plan, and until staff has a better understanding of the impact of High Speed Rail alignment. This closure would likely be for a 2-3 year period. Mitigation funds from HSR could provide funds for redesigning the skate park in a different location. At the current rate of vandalism of the temporary fence, it is estimated that it would cost approximately \$5,000 - \$10,000 annually to repair the fence.

Rental/repair of temporary fence

\$5,000 - \$10,000 annually

Judy Peterson

Recreation Manager



## PARKS AND RECREATION COMMISSION AGENDA

MEETING DATE:

NOVEMBER 8, 2010

TO:

PARKS AND RECREATION COMMISSION

FROM:

JOE FELZ, DIRECTOR OF PARKS AND RECREATION

SUBJECT:

TRAIL AD HOC ADVISORY COMMITTEE REPORT

#### **SUMMARY**

The Parks and Recreation Commission formed the Trail Ad Hoc Advisory Committee (TAHAC) at their September 8, 2008 meeting. The mission of the TAHAC was to review trail-related issues and recommend possible solutions to the Parks and Recreation Commission. Commissioners Shanfield and Dasney were appointed to the Committee and worked with staff to select six residents, representing trail users (horses, bicycles, walking/running, hiking). At the January 12, 2009 Parks and Recreation Commission meeting the following members were appointed:

Bob Hayden HorsesTeri Fitzgerald BikingKristen Habbestad Running

Dottie Pendleton

Hiking/Walking

Winston Creel

At-Large

Michael Savage

At-Large

#### RECOMMENDATION

That the Parks and Recreation Commission review and file this report.

#### PROPOSED COSTS

None.

#### DISCUSSION

The TAHAC conducted their first meeting on February 18, 2009. The committee began reviewing several trail issues, including:

- Possible hours for trails to be open for use
- Dogs off-leash on trails

- Update of trail markers
- Trail Capital Projects:
  - o Puente Street Trail
  - Hiltscher Trail and Euclid Street crossing

#### The current status on these issues is:

- The TAHAC recommended and the Parks and Recreation Commission adopted (at their 3/18/09 meeting) trail hours of "Closed from midnight to 4:00 a.m."
- An awareness campaign has been launched and continues regarding dogs being off-leash on trails
- As of 11/01/10, the Juanita Cooke trail has 11 "test trail markers." These markers have trail ID, ¼ mile indicators, trail courtesy and emergency location numbers.

The Committee will be continuing their work on trail related issues. Currently under discussion is:

- Panorama Park (dog related issues)
- Review preferred trail marker design and expansion system-wide
- New postings at trail head locations
- Brea Dam Trail Issues (horses vs bikes)

Grace Miranda Lowe Recreation Manager

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Director of Parks and Recreation