IL
1/28/10

CITY OF FRESNO
City Clerk's Office (Original)

MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF FRESNO AND SHINZEN FRIENDSHIP GARDEN, INC. REGARDING CONSTRUCTION OF NEW DOCENT STRUCTURE

This MEMORANDUM OF UNDERSTANDING is entered into this 28th day of January, 2010, by and between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as the "City," and SHINZEN FRIENDSHIP GARDEN, INC., a California non-profit corporation, hereinafter referred to as "Shinzen."

WHEREAS, the City owns a municipal park known as the Ralph M. Woodward Park ("Woodward Park") wherein an area has been designated as the Japanese Garden, hereinafter referred to as the "Garden"; and

WHEREAS, Shinzen was incorporated for the purpose of developing and promoting the Garden as a cultural and aesthetic center to benefit all citizens of Fresno; and

WHEREAS, Shinzen has most recently retained the services of an architectural firm to develop plans and specifications for the construction of a new entrance building in the Garden hereinafter referred to as the "Project"; and

WHEREAS, Shinzen has offered to donate the Project to the City; and

WHEREAS, the Project will benefit the residents of the City and County of Fresno;

NOW, THEREFORE, the parties hereto agree as follows:

1. License for Construction. The City hereby grants to Shinzen, its agents and contractors, a license to enter on the Woodward Park premises and construct the Project which shall include the removal of an existing docent structure and construction of a new enclosed entry structure. The term of this License shall expire upon final acceptance of the Project by the City or two years from the Effective Date, whichever shall occur first.

2. Plans and Specifications. Shinzen shall prepare complete plans and specifications for the construction of the Project, which plans and specifications shall be subject to the approval of the Parks, After-school, Recreation and Community Services Department, Development Department, and Public Works Department of the City. Shinzen and the City shall use best efforts to have final City approval of the plans and specifications within forty-five (45) days after they are initially submitted. Shinzen shall submit applications to the City and all other government agencies having jurisdiction to obtain all permits, entitlements, and reviews necessary to construct the Project, including but not limited to a conditional use permit and any necessary environmental assessment. Shinzen shall cooperate with the City and other governmental agencies in processing such applications and presenting them for final approval. The City shall process all such applications submitted to it as expeditiously as possible and present them for final approval at the earliest possible date.

3. Fees. City and Shinzen shall each pay one-half of the following fees:

January 23, 2009 – Conditional Use Permit - $160.00
March 4, 2009 – Plan Check Fee - $269.68
May 11, 2009 – Plan Check Fee Final Payment - $431.45
Building Permit (To be paid in December 2009) - $391.00

4. ADA Parking Lot Upgrades. City will agree to re-stripe the parking lot and install an ADA-compliant ramp at City's sole cost and expense.

5. Construction of the Project. Upon final City approval of such plans and specifications and approval of all necessary building and development permits, and development entitlements, Shinzen shall select a contractor and diligently proceed to construct the Project in accordance with such approved plans and specifications and applicable legal requirements in effect at the time the plans and specifications are given final City approval and any changes in such requirements as necessitated by public health and safety. Any changes in the plans and specifications of the Project shall be subject to prior written approval by Shinzen and the City's Parks, After-school, Recreation and Community Services Director.

6. Cost of Construction. Except as otherwise set forth in this Agreement, the entire cost of the Project shall be borne by Shinzen.

7. Liens. Shinzen shall not suffer or permit to be enforced against the City's title to the Garden, any encumbrance, lien, claim or demand arising from any work, construction or installation of the Project by Shinzen or its contractors.

8. Contractor's License. All construction of the Project shall be conducted by a general construction contractor licensed in accordance with the laws of the State of California and acceptable to the City through its City Engineer.

9. Completion of Project. Immediately upon the completion of the Project, or upon expiration of this license, whichever shall occur first, ownership and possession of the Project, regardless of its state of completion on such date, shall vest in the City, including all rights of management and control thereof, and the City shall pay all operating and maintenance costs for the Project.

10. Design Professional Engineer Indemnification and Insurance Requirements. Unless waived by the City as to a specific consultant, Shinzen shall incorporate the provisions in Exhibit A in all consultant agreements and in all consultant design and/or engineering agreements for Projects with the respective engineer and design professional (each design and/or engineering professional hereinafter referred to as the "Consultant"). City agrees to waive the requirements of Exhibit A for architect Irving Miyamoto.

11. General Construction Contractor Indemnification and Insurance Requirements. Shinzen shall incorporate the provisions in Exhibit B in all construction contracts for Projects with the general construction contractor ("Contractor").

12. City as Third Party Beneficiary in General Construction Contract. Shinzen shall incorporate a provision in all construction contracts and consultant design engineering agreements for Projects with the respective Contractor and Consultant making City a third party beneficiary under said contract and agreement of all Shinzen rights and interests thereunder.

13. Attorneys Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

14. Effective Date of Agreement. This Agreement shall not become effective until Shinzen has obtained all required permits, reviews and development entitlements needed to proceed with construction of the Project including, but not limited to, the environmental review process required by the California Environmental Quality Act and a Conditional Use Permit as required by the Fresno Municipal Code.

IN WITNESS WHEREOF, the parties have entered into this License Agreement on the date and year first written above.

CITY OF FRESNO
a Municipal corporation

By: _____
Randall Cooper, Director

SHINZEN FRIENDSHIP GARDEN, INC.
a California non-profit corporation

By: _____

Name: Judy Shehadey
Title: President

By: _____

Name: Richard Kassabian
Title: Vice President/Treasurer

Approved as to Form:
APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
KATHERINE E. BRADLEY
Deputy City Attorney

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____ 2/25/10
Deputy

Exhibit A
Design Professional/Engineer ("Consultant")
Indemnification and Insurance Requirements

Indemnification. To the furthest extent allowed by law including California Civil Code section 2782.8, Consultant shall indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This and the two preceding paragraphs shall survive termination or expiration of this Agreement.

Insurance. Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City of Fresno's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability with limits of liability of not less than the following:

$1,000,000 per occurrence for bodily injury and property damage
$1,000,000 per occurrence for personal and advertising injury
$2,000,000 aggregate for products and completed operations
$2,000,000 general aggregate applying separately to the services performed under the Agreement

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than $1,000,000 per accident for bodily injury and property damage.

(iii) PROFESSIONAL LIABILITY (Errors and Omissions) insurance with limits of liability of not less than $250,000 per claim/occurrence and $500,000 policy aggregate.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(v) EMPLOYERS' LIABILITY insurance with limits of liability of not less than $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City of Fresno's Risk Manager or his/her designee. At the option of the City of Fresno's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City of Fresno, its officers, officials, employees, agents and volunteers; or (ii) Consultant shall provide a financial guarantee, satisfactory to City of Fresno's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City of Fresno be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City of Fresno. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City of Fresno with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be primary and no contribution shall be required of City of Fresno. The coverage shall contain no special limitations on the scope of protection afforded to City of Fresno, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City of Fresno, its officers, officials, agents, employees and volunteers.

If the Professional Liability (Errors and Ommisions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Consultant must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to the City of Fresno for review.
5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City of Fresno with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City of Fresno's Risk Manager or his/her designee before work commences.** Upon request of City of Fresno, Consultant shall immediately furnish City of Fresno with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of the Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City of Fresno that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City of Fresno. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City of Fresno hereunder shall in any way relieve Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City of Fresno that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City of Fresno shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, agents, employees, persons under the supervision of Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of City of Fresno, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City of Fresno prior to the commencement of any work by the subcontractor.

Exhibit B
General Construction Contractor ("Contractor")
Indemnification and Insurance Requirements

Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend the City of Fresno and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by the City of Fresno, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether the City of Fresno or any of its officers, officials, employees, agents, consultants or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs, or damages caused by the active or sole negligence, or the willful misconduct, of the City of Fresno or any of its officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend the Cityof Fresno and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This and the two preceding paragraphs shall survive termination or expiration of this Contract.

Insurance. Throughout the life of this Contract, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City of Fresno's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

$1,000,000 per occurrence for bodily injury and property damage
$1,000,000 per occurrence for personal and advertising injury
$2,000,000 per occurrence for products and completed operations
$2,000,000 aggregate for products and completed operations
$2,000,000 general aggregate applying separately to the work performed under the Contract

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and

non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than $1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.

(v) BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. **(Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)**

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City of Fresno's Risk Manager or his/her designee. At the option of the City of Fresno's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City of Fresno, its officers, officials, employees, agents and volunteers; or (ii) Contractor shall provide a financial guarantee, satisfactory to City of Fresno's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City of Fresno be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City of Fresno. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City of Fresno with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of City of Fresno. The coverage shall contain no special limitations on the scope of protection afforded to City of Fresno, its officers, officials, employees, agents and volunteers. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City of Fresno as a named insured. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City of Fresno, its officers, officials, agents, employees and volunteers.

Contractor shall furnish City of Fresno with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City of Fresno's Risk Manager or his/her designee before work commences.** Upon request of City of Fresno, Contractor shall immediately furnish City of Fresno with a complete copy of any insurance policy required under this Contract, including all

endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Contract.

If at any time during the life of the Contract or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Contract shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City of Fresno that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City of Fresno. Any failure to maintain the required insurance shall be sufficient cause for City of Fresno to terminate this Contract. No action taken by the City of Fresno hereunder shall in any way relieve Contractor of its responsibilities under this Contract. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City of Fresno that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Contract. The duty to indemnify City of Fresno shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Contract and the final acceptance of the work or materials to be performed or supplied thereunder, the Contractor shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the Contractor or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

If Contractor should subcontract all or any portion of the services to be performed under this Contract, Contractor shall require each subcontractor to provide insurance protection in favor of City of Fresno, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and City of Fresno prior to the commencement of any work by the subcontractor.

NO RETURN

January 29, 2010

Council Adoption: 01/28/10
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 1/28/10, Council took legislative action entitled **Appv MOU w/ Shinzen Friendship Garden, Inc re: new docent structure in Japanese Garden**, Item No. **1L**, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Xiong, Sterling, Westerlund
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before February 8, 2010. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

****

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____

_____ Date: _____
Ashley Swearengin, Mayor

COUNCIL OVERRIDE ACTION: Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	

February 11, 2010

Council Adoption: 02/11/10
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 2/11/10, Council took legislative action entitled **Appv 3rd amndmnt to MOU w/Fresno Storyland and Fresno Chaffee Zoo Corporation**, Item No. **1G**, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Xiong, Sterling, Westerlund
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before February 22, 2010. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

****

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearengin, Mayor

Date: 2·16·10

COUNCIL OVERRIDE ACTION:

Date:

Ayes	:
Noes	:
Absent	:
Abstain	:

City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.	1 L
COUNCIL MEETING	1/28/10
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

Presented to City Council
Date 1/28/10
Disposition Rec approved

January 28, 2010

FROM: RANDALL L. COOPER, Director
Parks, After School, Recreation and Community Services Department

BY: PAUL A. MELIKIAN, Administrative Manager
Parks, After School, Recreation and Community Services Department

SUBJECT: APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF FRESNO AND SHINZEN FRIENDSHIP GARDEN, INC. REGARDING CONSTRUCTION OF A NEW DOCENT STRUCTURE IN THE JAPANESE GARDEN

RECOMMENDATIONS

Staff recommends that the City Council approve the attached Memorandum of Understanding (MOU) with the Shinzen Friendship Garden, Inc. for the construction of a new docent structure in the Japanese Garden located in Woodward Park.

EXECUTIVE SUMMARY

The attached MOU allows the City and the Shinzen Friendship Garden organization to work together to construct a new docent structure at the entrance to the Japanese Garden. The existing structure is not fully enclosed and does not meet the operating needs of the City or Shinzen members. The Friends of the Shinzen Garden have a long history of making significant investments in the facility; their estimated contribution to this project is $40,000, derived from annual fund-raiser events, member dues, and donations. The new structure (drawing attached) will be more functional and aesthetically pleasing than the current building.

The Friends of the Shinzen Garden will be responsible for: preparing all plans and specifications (subject to approval by the City); obtaining all necessary permits and reviews, selecting a contractor; paying all costs of demolition and construction, and ½ of permit fees. Using a portion of accumulated Garden entrance and reservation revenue, the City agrees to pay the cost of re-striping the Japanese Garden parking lot, install an ADA compliant ramp, and pay ½ of the permit fees.

This MOU has been reviewed by the City Attorney and Risk Management Offices.

BACKGROUND

The following background information was provided by the Shinzen Japanese Garden website, www.shinzenjapanesegarden.org, and condensed for purposes of this report.

The five-acre Shinzen Friendship Garden is located within Woodward Park. In 1967, when the Park was being developed, the idea was proposed to create a Japanese garden complete with stone lanterns and a teahouse to be dedicated to Fresno's Sister City Kochi, Japan, as a symbol of friendship and international brotherhood, and for the promotion of cultural relations between the two cities. A committee was organized to develop plans and raise the required funding.

Later that year the Fresno City Council approved this concept and allocated the acreage for such a garden. A group led by Ben Nakamura, a Fresno accountant, was formed to enlist the aid of the Japanese-American community. During the next few years, several trips were made to Japan to seek support for the Garden. In 1972, Paul Saito, a Landscape Architect from Orange County, California, was chosen to design the Garden.

He was assisted by a master teahouse designer from Japan, Shiro Nakagawa. The Garden was planned around the four seasons, with distinctive plantings in each area. The plans were completed and approved in 1974.

The ground-breaking ceremony was held in 1975 with Bishop Matsui of the Shinto Church officiating, and Mayor Dan Whitehurst, Councilmember Ted Wills, Ben Nakamura and other members of the Shinzen Friendship Garden Committee present. By spring 1981, the Garden was developed enough to be open for public viewing. Later that year the Shinzen Garden Committee was incorporated as a separate entity. The City of Fresno owns the property and is responsible for its upkeep and security, but most of the additions and improvements are funded by members' dues and private and corporate donations. Future plans for the Garden include a utility/classroom, restrooms, museum and gift shop, and tearoom. Additional plantings and improvements make the Shinzen Friendship Garden an ongoing project.

The annual events in the Garden include the Spring Blossom Festival held the weekend nearest the vernal equinox; Spring Artists in the Garden Day; Membership Meeting and Dinner in July; Toro Nagashi (Floating Lantern) Ceremony in August; the Shinzen Run in September; the Shinzen Cultural Faire held on the first Saturday in November in conjunction with the Fall Color Festival on the first full weekend in November; and Fall Artists in the Garden Day.

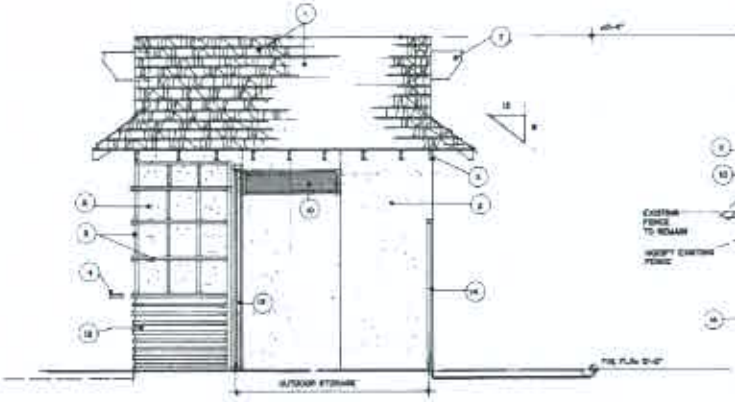
FISCAL IMPACT
This MOU will have no impact to the General Fund. The Shinzen Friendship Garden, Inc. will contribute an estimated $40,000 to this project. The City's estimated contribution of $20,000 will be derived from the Japanese Garden capital improvement fund, which receives revenue from gate fees and reservations.

The new building will also allow for a cash register to be secured in the facility, greatly improving accountability of gate fee revenue.

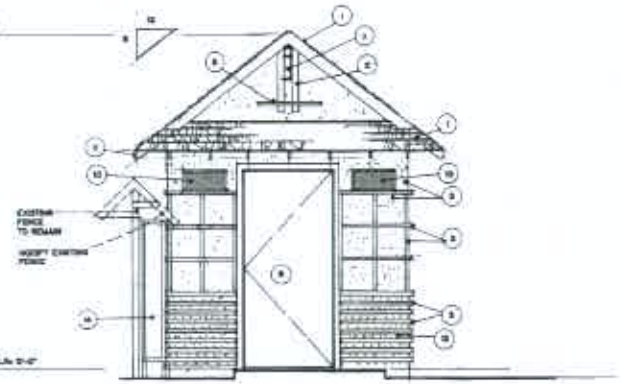
Attachment: Memorandum of Understanding
Drawing of new Docent Building

EXTERIOR FINISH SCHEDULE

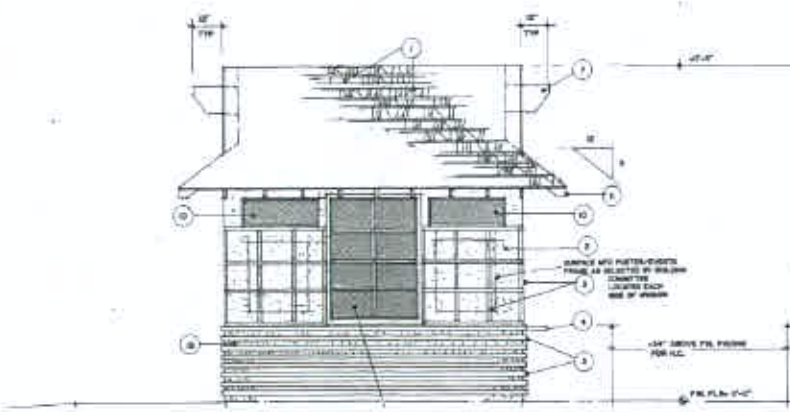
1	FIRE RESISTANT WOOD SHINGLES OVER SOLID SHEATHING WITH UNDERLAYMENT COMPLYING WITH [illegible] TYPE I.
2	5/16" JAMES-HARDIE VERTICAL SIDING ("STUCCO") OVER HARDIE-WRAP WEATHER BARRIER. PAINT WITH 3-COATS HIGH QUALITY EXTERIOR GRADE ACRYLIC PRIMER & 2-COATS HIGH QUALITY FINISH COAT COLOR = "OFF-WHITE"
3	1-1/2" x 1-1/2" FLEXIBLE TRIM / 3-COATS PRIMER OR SEALER + 2-COATS FINISH. COLOR = MEDIUM BROWN.
4	SHINGLE TOP
5	2x2 WOOD TRIM / 2-COATS PRIMER + 2-COATS FINISH
6	1-1/2"x1-1/2" DARK BROWN SLIM TUBE WITH ROUNDED EDGE
7	OUTRIGGER BEAM (2-COATS EXTERIOR PRIMER + 2-COATS FINISH)
8	HOLLOW METAL DOOR + FRAME / PAINTED MEDIUM BROWN.
9	STEEL GLAZING WINDOW WITH 1/4" CLEAR LAMINATED GLASS
10	1/4" PROFITED LAMINATED GLASS IN WOOD STOPS (PAINTED)
11	3x RAFTERS (2-COATS EXTERIOR PRIMER + 2-COATS FINISH)
12	PAINT BARE BETWEEN HORIZONTAL TRIM
13	METAL DOOR WITH FRAME / PAINTED. DOOR DESIGN TO MATCH QUOTING WOOD GATE
14	BRICKWAY INCH CLOSURE / PAINTED.
15	FOLDING SECURITY SCREEN / PAINTED.

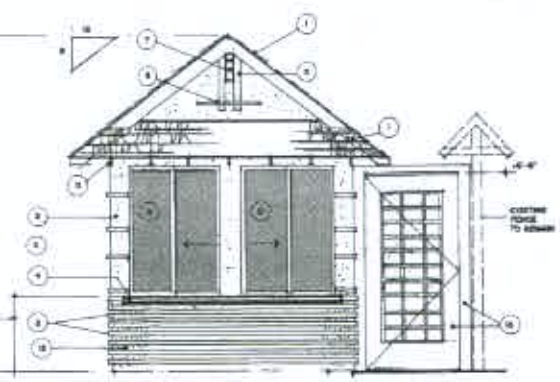


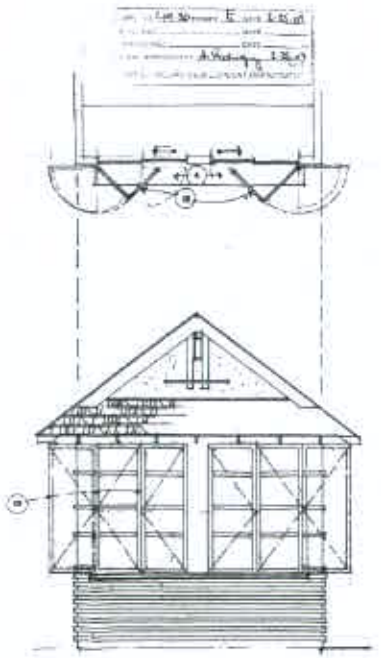
RIGHT ELEVATION
1/2" SCALE



REAR ELEVATION
1/2" SCALE







ENTRY STRUCTURE AT SHIN ZEN FRIENDSHIP GARDEN
14 E. AUDUBON DRIVE
FRESNO, CA.

EXTERIOR ELEVATIONS

Date: 1/26/2009

Scale: AS NOTED

Job No: AS NOTED