



AGENDA REPORT
 SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: September 17, 2013

Agenda Item 6F
Approvals:
 City Manager [Signature]
 Dept. Head [Signature]
 Attorney _____
 Finance [Signature]

Department: Beaches, Parks & Recreation
Prepared By: Sharon Heider, Beaches Parks & Recreation Director

Subject: ***APPROVAL OF AGREEMENT WITH COURTNEY'S SANDCASTLE FOUNDATION FOR FUNDING OF COURTNEY'S SANDCASTLE PHASE II.***

Fiscal Impact: Yes. Acceptance of the donation by the City Council will result in \$340,000 in additional revenue in The Park Acquisition and Development Fund. The \$340,000 new appropriation will be added to the \$110,000 the City Council previously appropriated to match funds raised by Courtney's Sandcastle Foundation, providing a total appropriation of \$450,000 for the project.

Summary: The Courtney's SandCastle Foundation has raised the funds necessary for the development of phase II of the Courtney's SandCastle Universally Accessible Playground. This Agreement will formalize the acceptance and use of the funds. Staff recommends that the City Council approve the Funding Agreement.

Background: Courtney's SandCastle Universally Accessible Playground, Phase I opened on February 25, 2012. On October 16, 2012, the City Council approved matching funds up to \$110,000 (approximately 25%) towards completing the project (Phase II), while Courtney's SandCastle Foundation committed to an aggressive fundraising push to provide the remaining funds.

The Courtney's SandCastle Foundation has achieved its fundraising goal, and committed the \$340,000 to the City on August 20, 2013 for the development of Phase II. This Funding agreement will formalize the acceptance and use of those funds.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve the funding agreement and authorize the Mayor to execute the agreement between the City and Courtney's Sandcastle Foundation.

Attachments: Funding Agreement

Notification: Courtney's SandCastle Foundation

AGREEMENT

This Agreement is made this _____ day of _____, 2013, by and between COURTNEY'S SANDCASTLE CHARITABLE FOUNDATION ("COURTNEY'S") and CITY OF SAN CLEMENTE ("CITY").

RECITALS

WHEREAS, COURTNEY'S has raised a total of _____ Dollars (\$_____) for the construction costs of Phase II of Courtney's SandCastle Universal Playground, located at the Vista Hermosa Sports Park in San Clemente, CA; and

WHEREAS, CITY has agreed to match funds with COURTNEY'S in the amount of One Hundred Ten Thousand Dollars (\$110,000); and

WHEREAS, the total projected costs for the construction of Phase II are estimated at Four Hundred Fifty Thousand Dollars (\$450,000), but final bids and final costs for the project may be lower than that amount.

THEREFORE, the parties agree as follows:

1. COURTNEY'S will transfer the sum of _____ Dollars (\$_____) to CITY.
2. CITY will add \$110,000 of its own funds to that amount, for a total of _____ Dollars (\$_____) ("Project Funds").
3. CITY shall pay for the construction costs of Phase II from said total Project Funds, and shall return any surplus funds to COURTNEY'S for its general purpose of improving and maintaining Courtney's SandCastle Universal Playground. CITY shall be under no obligation to invest or expend more than One Hundred Ten Thousand Dollars (\$110,000) of City funds on the construction of Phase II of Courtney's Sand Castle Universal Playground, located at the Vista Hermosa Sports Park in San Clemente, CA. In the event that Phase II of the Courtney's SandCastle Universal Playground Project cannot be constructed in accordance with the approved plans for an amount equal to or less than the Project Funds, City shall meet with COURTNEY'S in an effort to arrive at agreed upon revisions to the approved plans which would result in cost reductions that would permit Phase II of Courtney's SandCastle Universal Playground to be constructed for an amount equal to or less than the total Project Funds. In the event that no agreement is reached, CITY shall return all unused funds to COURTNEY'S and CITY shall have no obligation to construct Phase II Courtney's SandCastle Universal Playground
4. Subject to Section 3 above, CITY shall design, and construct Phase II of Courtney's SandCastle Universal Playground in accordance with the approved

plans which meet the guidelines for universal accessibility.

5. The Parties to this agreement shall defend, indemnify, and hold free and harmless each other (the indemnifying party shall herein be referred to as the "Indemnifying Party") and their respective agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Indemnifying Party or its officers, agents, employees, representatives, or subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of the Indemnifying Party , and anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.
4. The provisions of this Agreement shall inure to the benefit of and are binding on the parties' successors, and assigns.
5. This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the State of California, irrespective of the place of execution or the place or places of performance.
6. Unless otherwise specifically provided in this Agreement, this Agreement shall supersede any and all other prior agreements, either oral or written, between the parties with respect to the subject matter of this Agreement
7. This Agreement does not create, and shall not be construed or deemed to create, any agency, partnership, joint venture, landlord-tenant or other relationship between CITY and COURTNEY'S.
8. The approval and execution of this Agreement shall not be deemed to confer any rights upon any person or entity other than CITY and COURTNEY'S. There are no third party beneficiaries to this Agreement.
9. CITY and COURTNEY'S shall each execute and deliver any and all additional papers, documents and other assurances, and do any and all acts and things reasonably necessary, in connection with the performance of their obligations hereunder and to carry out the intent of the parties under this Agreement.
10. This Agreement may be executed in two or more counter-parts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

Executed this _____ day of _____, 2013, at San Clemente, California.

COURTNEY' S

CITY

Courtney's SandCastle Charitable

City of San Clemente Foundation

By: _____

By: _____

Title: _____

Title: _____