

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Matthew Fertal  
Dept.: City Manager  
Subject: GRANT AGREEMENT WITH COUNTY OF ORANGE FOR ADDITION OF A SPLASH PAD AT ATLANTIS PLAY CENTER

From: Kimberly Huy  
Dept.: Community Services  
Date: February 24, 2009

OBJECTIVE

To transmit a grant Agreement between the County of Orange and the City of Garden Grove for \$100,000 to be used for the addition of a splash pad at Atlantis Play Center.

BACKGROUND

In December 2008, the Community Services Department received a request from the office of Orange County Supervisor Janet Nguyen to submit a "wish list" of park projects for possible funding.

DISCUSSION

Staff was recently notified that the City of Garden Grove has been awarded a \$100,000 grant from the Orange County Board of Supervisors for the addition of a water play area consisting of several play structures at Atlantis Play Center to be installed by April 30, 2010. The area will be primarily for warm weather use, and staff anticipates it will add greatly to the appeal of Atlantis, particularly in the summer months.

FISCAL IMPACT

The grant received from the County will fully fund the design and installation of the splash pad, so there will be no direct financial impact to the City.

COMMUNITY VISION IMPLEMENTATION

This project aligns with the community vision of providing additional, quality community facilities including recreation facilities.

GRANT AGREEMENT WITH COUNTY OF ORANGE  
FOR ADDITION OF A SPLASH PAD AT  
ATLANTIS PLAY CENTER  
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RECOMMENDATION

That the City Council:

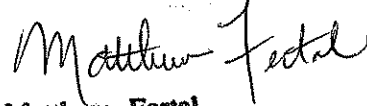
- Approve the Agreement between the County of Orange and the City of Garden Grove for the addition of a splash pad at Atlantis Play Center, and
- Authorize the City Manager to execute the Agreement.



KIMBERLY HUY  
Director

Attachment: Agreement between the County of Orange and the City of Garden Grove for Atlantis Play Center

**Recommended for Approval**



**Matthew Feral**  
City Manager

**AGREEMENT  
BETWEEN COUNTY OF ORANGE AND CITY OF GARDEN GROVE  
FOR ADDITION OF MULTIPLE WATER FEATURES AT ATLANTIS PLAY  
CENTER**

This Agreement, hereinafter "Agreement," to fund the addition of multiple water features at the Atlantis Play Center in the City of Garden Grove is made and entered by and between the County of Orange, a political subdivision of the State of California, hereinafter "COUNTY," and the City of Garden Grove, hereinafter "CITY," with a place of business located at 11222 Acacia Parkway, Garden Grove, California 92840. COUNTY and CITY may also be referred to herein as "party" or collectively as "parties."

**RECITALS**

**WHEREAS**, COUNTY, by Minute Order dated December 16, 2008, a copy of which is on file with the Clerk of the Board of Supervisors of Orange County and which by this reference is incorporated herein and made a part of hereof as if fully set forth, has determined, pursuant to Government Code Section 26227, to expend a portion of its general funds in the amount of \$100,000 [hereinafter "the funds"] for contribution to CITY to be used for the addition of multiple water features at the Atlantis Play Center, hereinafter collectively referred to as "project," to be completed between December 17, 2008 and April 30, 2010.

**WHEREAS**, said project meets the social needs of the population of Orange County.

**THEREFORE**, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, the parties agree as follows:

1. EFFECTIVE PERIOD – TERMINATION DATE

The effective period of this Agreement shall be the period beginning December 17, 2008 and ending April 30, 2010, subject to the provisions of Section 15 of this Agreement. CITY agrees that the funds received under this Agreement shall be disbursed on or before April 30, 2010, and that any and all funds remaining as of May 1, 2010, which have not been disbursed shall be returned by CITY to COUNTY. No expense of CITY will be reimbursed by COUNTY if incurred after April 30, 2010.

2. PROJECT PROPOSAL

CITY agrees to comply with all provisions set forth in this Agreement for use of the funds in a professional, timely and diligent manner. The parties hereto agree that concerning matters not specifically contained within the body of this Agreement, the COUNTY's determinations will be final and the COUNTY will control the use of the funds.

CITY agrees that the funds will be used for the addition of multiple water features at the Atlantis Play Center between December 17, 2008 and April 30, 2010.

Notwithstanding Section 1 herein, CITY agrees to use any real or personal property or equipment that is constructed, acquired or improved with the funds for its entire useful life for the purposes, as described herein, for which the funds were granted to CITY by COUNTY. CITY agrees to notify COUNTY promptly if it ceases to use such property or equipment for the purposes described herein at any time before the end of its useful life. CITY agrees to properly maintain, repair and keep in good working order all such property or equipment.

CITY warrants that it will obtain and keep in full force and effect, during the term of this agreement and for the useful life of any real or personal property or equipment constructed, acquired or improved with the funds, all permits, licenses or other governmental approvals required for the project and for any services provided in or with property or equipment constructed, acquired or improved with the funds.

CITY further agrees that lack of compliance constitutes grounds for COUNTY to pursue the remedies set forth in Section 15 of this Agreement and to reduce the level of payment that otherwise would be provided under Section 6 of the Agreement. Such reduction shall occur only as a result of action of the COUNTY Board of Supervisors. Before such reduction may be made, COUNTY shall provide CITY with at least ten (10)

days written notice of the proposed reduction and of the time and place where the Board of Supervisors shall consider the reduction.

3. MODIFICATION OF AGREEMENT TERMS

The parties hereto agree that the terms agreed upon in Section 2 may be modified so long as the amount of the total grant is not increased or reduced and the basic goals and objectives of the project are not altered. However, no such modification shall be made without the prior written approval of the County Executive Officer or his designee.

4. MAXIMUM UTILIZATION AND ACCESS TO RESIDENTS

CITY agrees that its level of operation will be adequate to ensure maximum utilization by the public of the property, equipment, programs and/or services funded by this Agreement and that an opportunity to use and enjoy said property, equipment, programs and/or services shall be granted to all residents of the COUNTY on the same conditions under which the residents of the target area may use and enjoy it.

5. EVALUATION

CITY agrees and understands that evaluation is an essential condition to this Agreement and that COUNTY will evaluate CITY in accordance with this Agreement. The parties hereto agree that at any time, and for any purpose, the County Executive Officer, or his designee, may call for an Evaluation to be conducted.

6. PAYMENTS BY COUNTY

Upon the effective date of this Agreement, COUNTY agrees to make periodic payments to CITY upon receipt of invoice(s) from CITY showing actual amounts expended by CITY for the project, or CITY may invoice County upon receipt of invoice from service provider for approved project expenses as identified in Section 2. Total payment hereunder shall be limited to \$100,000.

7. CONFLICT OF INTEREST AND GRATUITIES

CITY agrees and understands that COUNTY's funds shall not be used by CITY to pay or reimburse any staff person or consultant who is a member or officer of the City Council or other official governing body of CITY. CITY warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by CITY or any agent or representative of the CITY with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement.

8. ACCESS AND RECORDS

CITY shall keep true and accurate accounts, records and books in performance of this Agreement in accordance with generally accepted accounting principles. Unless otherwise agreed in writing by the County Executive Officer, or designee, CITY shall maintain separate accounting records for all funds received from COUNTY under this Agreement. All accounting records and evidence pertaining to all costs of CITY shall be kept available at CITY's office or place of business during duration of this Agreement and thereafter for a period not less than five (5) years. CITY shall make all of its records available to COUNTY upon request during regular business hours for the purpose of evaluation or auditing and shall furnish clerical assistance for these purposes to COUNTY as required. CITY agrees to implement all accounting and/or record-keeping recommendations made by COUNTY for all funds received from COUNTY under this Agreement. In the event CITY does not make its books and financial records available to COUNTY, CITY agrees to pay all necessary and reasonable expenses, including attorney's fees, incurred by COUNTY in obtaining the records and conducting an audit or evaluation.

9. INDEMNIFICATION AND INSURANCE

CITY agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the performance provided by CITY pursuant to this Agreement. If judgment is entered against CITY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CITY and COUNTY agree that liability will be apportioned as determined by the court or jury.

CITY certifies that it has insurance coverage or self-insurance that is adequate to cover all risks associated with the project. If it has insurance covering the project, CITY will add COUNTY as an additional insured.

10. INDEPENDENT CONTRACTOR

CITY shall be considered independent contractors and neither their employees nor subcontractors, agents or anyone else working under or on behalf of CITY or CITY shall be considered an agent or an employee of COUNTY. Further, neither CITY or CITY's employees nor subcontractors, agents or anyone else working under or on behalf of CITY or CITY shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

11. ASSIGNMENT OR SUBCONTRACTING

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by CITY without the express written consent of COUNTY. Any attempt by CITY to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of COUNTY shall be invalid and shall constitute a breach of this Agreement.

12. NON-DISCRIMINATION

CITY shall not unlawfully discriminate in any way with respect to performance of this Agreement, on the basis of race, religion, gender, sexual orientation, age, national origin, ancestry, medical condition, or physical or mental disability and/or in violation of any applicable state or federal law or regulation, including but not limited to the federal Age Discrimination Act of 1975, Section 504 of the federal Rehabilitation Act of 1973, the Americans with Disabilities Act, the federal Civil Rights Act of 1964, Title VII of the federal Civil Rights Act of 1968, California Government Code section 11135 et seq., and the Unruh Civil Rights Act, as those acts may have been amended.

CITY agrees that in the performance of this Agreement it will comply with all applicable requirements of California Labor Code Section 1735, California Government Code Section 12940 et seq., and federal statutes and regulations pertaining to employment discrimination, and will not engage in nor permit any subcontractor to engage in unlawful discrimination in employment of persons. This prohibition shall pertain to employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any

other action or inaction pertaining to employment matters. CITY acknowledges that a violation of this provision shall subject CITY to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

13. PROHIBITION AGAINST LOBBYING

CITY shall not use any part of the funds received under this Agreement for the purpose of lobbying or for other activities intended to influence any legislation or the outcome of any election.

14. BREACH-SANCTIONS

If, through any cause, CITY fails to fulfill in a timely and proper manner any of its obligations under this Agreement, or if CITY violates any of the terms and conditions of this Agreement or any prior Agreement whereby COUNTY funds were received by CITY, or if CITY reports inaccurately, or if an Audit Report makes disallowances, CITY shall promptly remedy its acts or omissions or repay COUNTY all amounts spent in violation thereof. For any such failures or violations, COUNTY shall have the right to:

- (a) Discontinue project support until such time as CITY fulfills its obligation under this Agreement or any prior Agreement between COUNTY and CITY;
- (b) Collect such outstanding amounts as are determined by COUNTY to be due COUNTY from CITY;
- (c) Terminate this Agreement by giving written notice to CITY of such termination and specifying the effective date thereof.

The remedies for breach set forth in this Agreement do not preclude resort by either Party to any other remedies provided by law.

15. SOLE AGREEMENT

This Agreement expresses all the understandings of the parties concerning all matters covered. No addition to or alteration of the terms of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement formally approved by the parties hereto. Any addition or alteration of the Agreement may be subject to approval by the COUNTY Board of Supervisors.



16. GOVERNING LAW AND VENUE

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

17. NOTICES

Where required to be given under this Agreement, notices shall be in writing and deemed given when transmitted or delivered personally or deposited in the United States mail, postage prepaid, certified, addressed as follows:

COUNTY: County Executive Office  
County of Orange  
333 W. Santa Ana Boulevard, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701-4062  
Attn: Michelle Aguirre

CITY: City of Garden Grove  
11222 Acacia Parkway  
Garden Grove, CA 92840  
Attn: Matthew J. Fertil, City Manager

18. AUTHORITY

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

19. EMPLOYEE ELIGIBILITY VERIFICATION

CITY warrants that they fully comply with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. CITY shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the

Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CITY shall retain all such documentation for all covered employees for the period prescribed by the law. CITY shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CITY or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

20. COMPLIANCE WITH PRIVACY LAWS

CITY warrants that in providing services to their clientele and in performance of this Agreement, they will comply with all applicable state and federal confidentiality and privacy laws, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 and all amendments.

21. AGREEMENT WITH TERMS AND CONDITIONS

CITY acknowledges that it has read and agrees to all terms and conditions in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement with their respective signatures.

COUNTY OF ORANGE, a subdivision of the State of California

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

DATE: 12-3-08

BY: Paula Swaley  
Deputy

CITY OF GARDEN GROVE

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

APPROVED AS TO FORM:

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors