

AN ORDINANCE 2011-06-02-0447

AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO BOUNDLESS PLAYGROUNDS, INC. AND THE ACCEPTANCE UPON AWARD OF A NEW PLAYSCAPE, AT AN ESTIMATED VALUE OF \$150,000.00, FOR WOODLAWN LAKE PARK LOCATED IN COUNCIL DISTRICT 7.

* * * * *

WHEREAS, Boundless Playgrounds, Inc. is a non-profit organization that works with communities throughout the nation to develop playgrounds accessible by all children, with or without disabilities; and

WHEREAS, Woodlawn Lake Park playground near the pool consists only of a swing set, all other playground equipment has been removed due to age and condition of the equipment; and

WHEREAS, the project would be a community built playground with the assistance of employees of CVS Pharmacy; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

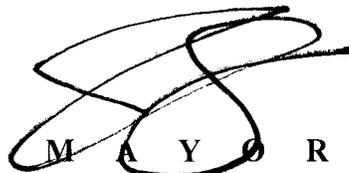
SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is hereby authorized to execute a grant contract with Boundless Playgrounds, Inc. for a new playscape, at an estimated value of \$150,000.00, for Woodlawn Lake Park located in Council District 7. A copy of the grant contract is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Non-cash donations to the City of San Antonio should comply with GASB 33 and COSA AD 8.8. These items must be coordinated through the city's Finance Department to recording of the proper accounting transactions

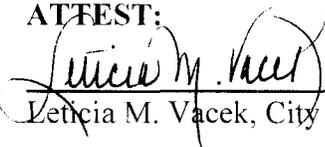
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

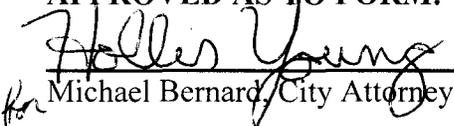
PASSED AND APPROVED this 2nd day of June, 2011.

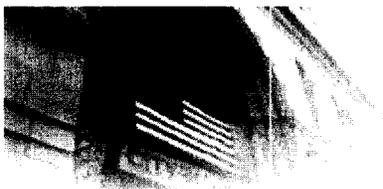

M A Y O R
Julian Castro

ATTEST:


Leticia M. Vacek, City Clerk

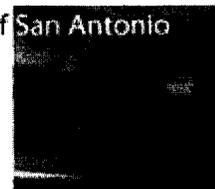
APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 23

Name:	23						
Date:	06/02/2011						
Time:	10:10:47 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the submission of a grant application to Boundless Playgrounds, Inc. and the acceptance upon award of a new playscape, at an estimated value of \$150,000.00, for Woodlawn Lake Park located in Council District 7. [Sharon De La Garza, Assistant City Manager; Xavier Urrutia, Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x			x	
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Gift Acceptance Agreement

This agreement (the "Agreement") is dated as of April , 2011 and is by and between the City of San Antonio, ("City"), acting by and through its City Council, with a place of business located at 100 Military Plaza, San Antonio, TX 78205, and Boundless Playgrounds, Inc. ("BP"), a not for profit corporation with offices at 1032 Chapel Street, 4th floor, New Haven, CT 06510. Pursuant to the terms and conditions of this Agreement, the City and BP hereby commit to the design and development of a Boundless™ universally accessible playground ("UAP") at 1103 Cincinnati Avenue, San Antonio, TX 78201.

WITNESSETH

WHEREAS, the City of San Antonio owns, operates, and maintains a public park known as Woodlawn Lake Park, located at 1103 Cincinnati Avenue, San Antonio, TX 78201 (the "Park");

WHEREAS, the City of San Antonio intends to utilize a portion of the Park property for the construction, operation, and maintenance of a universally accessible, fully-integrated, sensory-rich Boundless™ universally accessible playground (the "UAP");

WHEREAS, Boundless Playgrounds desires to act as a consultant on the play equipment configuration and layout of a UAP for the benefit of children of all abilities;

WHEREAS, CVS Caremark Charitable Trust, Inc. (the "Funder") has agreed to provide a \$100,000 gift to BP for the development of a UAP in the Park. Subject to the terms and conditions of this Agreement, BP will donate this gift to the City of San Antonio for the development of a UAP at the Park; and,

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the parties hereby agree as follows:

1. Project Obligations

- (a) Boundless Playgrounds, Inc.: BP shall act as a consultant to ensure that the UAP is designed, engineered, and installed by GameTime, a PlayCore, Inc. company ("GameTime"), under contract with the City, as a "Boundless™ Playground" in accordance with the BP Performance Criteria.
- (b) City of San Antonio: City shall be responsible for the oversight and management of the construction of the play environment. City shall be responsible for providing any and all requisite site preparation work in connection with the installation of the UAP including, but not limited to, grading, drainage (surface and subsurface), surveying and designing the layout of pathways and other structures or landscaping. The City shall also provide all site amenities deemed necessary for the UAP, subject to mutual agreement by BP and the City, which may include, but not be limited to, landscaping, benches, drinking fountains, and waste receptacles.

- (c) The \$100,000 in funds to be donated by the Funder to BP (the “Gift”) shall be used solely for the cost to purchase play equipment from GameTime for the UAP. The Funder, at its option, will be a partner in the promotion of this new UAP.

2. Naming Rights and Signage

At the option of BP, the City will grant recognition signage at the UAP for the Funder and for BP. The precise details of any such signage are to be mutually agreed to by the Funder, BP and the City, and the final signage design must be approved in writing by BP and the Funder prior to finalization of the signage by the City and subject to all necessary approvals, such as the Parks Advisory Board, the Historic and Design Review Commission and any pertinent City of San Antonio Ordinances.

BP grants the City a limited, non-exclusive license to use the names “Boundless™” and “Boundless Playgrounds®” and the Boundless Playgrounds logo on signage for the UAP in accordance with BP’s current usage standards. BP reserves the right to modify such usage standards at any time and without prior notice. Such license is granted solely for use in promoting, financing, constructing, using and maintaining the UAP, provided that the City is in compliance with all its obligations under this Agreement. Notwithstanding the foregoing, use of the names “Boundless™” and “Boundless Playgrounds®”, the Boundless Playgrounds logo and/or the words “A Boundless Playground” on signage at, near or about the UAP site requires specific written approval from BP. It is understood that such approval may be withheld or withdrawn if the completed installation or the maintenance of the UAP does not meet BP’s Criteria. This paragraph shall survive the expiration or sooner termination of this Agreement.

The City authorizes the use of the UAP’s name and site location to promote the mission of the Funder’s grant program and BP. The City releases BP, the Funder, and its subsidiaries and affiliates, and their respective officers, directors, agents, servants and employees from any and all liability connected with the publication or release of this information. The City waives any right to approve said information or to receive compensation or credit for the use of said information and also waives any right to bring a claim or cause of action related to this information. This paragraph shall survive the expiration or sooner termination of this Agreement.

3. Public Relations

The City shall designate an appropriate representative to work with BP and the Funder to help publicize events related to the UAP project. Without limiting the foregoing, at the Funder’s option: (a) the City shall allow the Funder’s associates and designees to participate in all volunteer/community build days with respect to the UAP, and the City shall obtain approval in advance from the Funder of the date(s) on which the volunteer/community build day(s) shall take place; and (b) the City shall collaborate with BP and the Funder to plan and hold a grand opening ceremony once the UAP is fully completed with all required approvals in place and ready to be opened to the public, and the Funder and its designees shall be entitled to participate in, and speak at, the grand opening ceremony.

4. Transfer of Funds

All parties agree on the project construction completion date of no later than November 30, 2011.

Therefore, it is agreed that:

- (a) GameTime, an approved UAP equipment vendor for the City and a BP Industry Partner, is selected to perform the design and installation of the UAP.
- (b) Upon BP's receipt of the Gift funds from the Funder and the satisfaction of both of the following conditions (1) and (2), BP shall deposit the Gift funds into the designated City account for the payment of direct costs associated with the purchase of play equipment for the UAP from GameTime:
 - (1) Approval by the City of the BP-certified equipment configuration and surfacing plan for the UAP; and
 - (2) Placement of the playground equipment order by City with GameTime in accordance with the approved plan referred to in (1) above.

5. Design, Engineering, Installation, and Equipment Standards

City shall work with the GameTime and BP to design, engineer, and install the UAP in accordance with all applicable U.S. Consumer Product Safety Commission (CPSC) guidelines, American Society for Testing and Materials (ASTM) standards, other applicable standards in the industry for universally accessible play areas, and all other applicable local, state, and federal laws and regulations.

6. Regulatory/Insurance Requirements

Prior to commencement of any work at the UAP site, City agrees to obtain insurance certificates from all playground and site related contractors and from the playground equipment and surfacing vendors that name Boundless Playgrounds, Inc. as an additional insured with respect to the UAP.

7. Subcontractors

In the event that City uses subcontractors to perform any of their respective obligations under this Agreement, reputable firms shall be selected for any work subcontracted, and City will provide appropriate language to cover their respective involvement in the project.

8. Timing

The parties agree that time is of the essence in performing their obligations under this Gift Agreement. City shall exercise its best efforts to ensure that the UAP is substantially completed by September 30, 2011. All parties to this agreement agree to develop a mutually acceptable timeline for all tasks required to complete the project.

9. Reports

It is agreed that the City will hold regular conference calls or provide updates via e-mail (to be determined) with the Funder and BP regarding the UAP project status and will submit a final project evaluation/report, including photos, newspaper articles and video. Other documentation may also be requested.

10. Design, Operation and Maintenance of UAP

The parties understand and agree that the UAP and all equipment, surfacing and related materials placed thereon shall at all times remain the property of City.

- a. City has selected Game Time as its UAP equipment vendor and will order a GameTime-BP Certified Model.
- b. GameTime will submit production plans and construction documents to BP and City for approval prior to the ordering of any equipment.
- c. City will arrange for BP to conduct an assessment of the play environment after the installation of the equipment, but before the installation of the safety surfacing. Any deficiencies noted in the report shall be subsequently corrected pursuant to BP's commercially reasonable instructions.
- d. The parties agree that following completion of the UAP, the City shall ensure that:
 - (1) Promptly after completion of the UAP, an inspection of the UAP is conducted by a Certified Playground Safety Inspector (CPSI), certified by the National Recreation and Parks Association;
 - (2) Prior to the opening of the UAP, GameTime, as the selected UAP equipment vendor, confirms in writing that the equipment has been properly installed in accordance with its standards and all applicable laws and regulations; and,
 - (3) Any safety deficiencies identified in the CPSI's inspection are promptly corrected by GameTime and certified in writing by GameTime as corrected.

- e. The City hereby agrees that the UAP shall be open to the public at all times of its operation and that the City shall be solely responsible for the safe operation, maintenance, and repair of the UAP (including but not limited to the grounds, the UAP surfacing, and the UAP equipment and apparatus in accordance with all applicable laws and regulations, including, without limitation, all applicable ASTM (American Society of Testing Materials), and CPSC (Consumer Products Safety Commission) standards.
- f. City agrees that, absent written consent from BP, which shall not be unreasonably withheld or delayed, it shall not, in any material manner, alter, replace, change or modify the UAP, including but not limited to the equipment and apparatus, unless absolutely necessary due to safety requirements and/or defective equipment. Such modifications shall be subject to prior written notification to the Funder and BP. In addition, City agrees to operate and maintain the UAP in accordance with the Americans with Disabilities Act (“ADA”), applicable state and local disability discrimination laws, applicable ASTM standards, and all other applicable federal, state, and local laws and regulations.

11. Intentionally Deleted.

12. Audit

The parties mutually agree that all records and books retained by any party reasonably related to the construction of this UAP shall be made available for inspection and/or audit to the requesting party at any time during normal business hours, under reasonable circumstances, and without business interruption. The requesting party shall be entitled to copy any information reasonably related to this Agreement from such records and books. The party requesting the inspection and/or the audit shall provide written notice to the other party at least fifteen (15) days prior to the date of the audit or inspection.

13. Termination

With the exception of Paragraph 11 of this Gift Agreement, Fifteen (15) years from the effective date hereof, this Agreement and the parties’ obligations hereunder shall terminate, and City shall retain ownership of all playground equipment and related improvements installed on the property. At that time, City may continue to operate a public playground at the site, but the obligations of the parties hereunder shall terminate.

14. Miscellaneous

If any provision or item of this Agreement or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Agreement that can be given effect without the invalid provisions, items or applications and, to this end, the provisions of this Agreement are hereby declared severable. The laws of the State of Texas shall govern the enforceability of this Agreement with respect to the payment of funds and the parties hereto consent to the jurisdiction of the courts located in the state of Texas in the event of a dispute arising hereunder; however, all other matters, including matters relating to

the construction, operation and maintenance of the playground, shall be governed by Texas law and the parties hereto consent to the jurisdiction of the courts located in the state of Texas in the event of a dispute arising hereunder. This Agreement shall be binding upon, and inure to the benefit of, all of the parties and their respective successor and agencies; provided that the obligations of BP are personal and shall not be assigned without the other parties' prior written consent. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth above.

BOUNDLESS PLAYGROUNDS, INC.:

THE CITY OF SAN ANTONIO, a municipal corporation, acting by and through its City Council:

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Date: _____

_____,
City Attorney

By: _____
City Attorney