

APPROVED
BY THE CITY COUNCIL

JUN 4 1998

OFFICE OF THE
CITY CLERK

1.12
AG98-063

THOMAS V. LEE
DEPUTY CITY MANAGER
DOWNTOWN DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

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May 22, 1998

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: AUTHORIZATION TO EXECUTE THE SECOND AMENDMENT TO CITY AGREEMENT #91-043 (AMUSEMENT RIDES IN WILLIAM LAND PARK); AND THE REPAYMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND FUNDERLAND, INC.

LOCATION AND COUNCIL DISTRICT: Four

RECOMMENDATION:

It is recommended that Council, by Resolution, authorize the City Manager to execute: (1) the Second Amendment to City Agreement #91-043, and (2) the Repayment Agreement between the City of Sacramento and Funderland, Inc., as attached hereto.

CONTACT PERSON: Barbara Bonebrake,
Downtown Enterprise Department Manager, 264-7733

FOR COUNCIL MEETING OF: June 4, 1998

SUMMARY:

This report provides information on the proposed Second Amendment to City Agreement Number 91-043, and on the Repayment Agreement between the City and Funderland, Inc. The Second Amendment to City Agreement Number 91-043 proposes a reduction from 26.5% to 10% in the percentage of rent paid by Funderland to the City for "Optional Services", which include sales of food and beverages, facility rentals, group sales, and birthday parties. The Repayment Agreement extends the period of repayment for collection of delinquent rent from June 1998 to September 1999.

COMMITTEE/COMMISSION ACTION:

The Land Park Community Association has reviewed the proposed Second Amendment to City Agreement #91-043, and the Repayment Agreement, and has no objection to their approval by Council.

BACKGROUND INFORMATION:

- The amusement rides area is one of the oldest family entertainment elements, not only in William Land park, but in the entire City parks system. This amenity, which encompasses approximately two acres, is located on Sutterville Road, south of 17th Avenue in close proximity to the pony rides area and Fairytale Town. Since 1946 the amusement rides area has been operated under an agreement with the City in which a percentage of the gross receipts was paid to the City as rent.
- The current operator, Sam Johnston, owner of "Midway of Fun" which does business in William Land Park under the name, "Funderland, Inc.", has operated the amusement rides for the last twelve years.
- In October, 1989, the City Council approved issuance of a Request for Proposals (RFP) for Amusement Rides Services. Following Council authorization, copies of the RFP were mailed to amusement rides operators throughout the state.
- The City received only one proposal. This proposal was from the existing operator, Funderland, Inc. A Selection Advisory Committee to the Director of Parks and Community Services was formed, consisting of one representative each from the Association to Preserve Land Park, the Sacramento Zoological Society and the Friends of Fairytale Town. Following review of the Funderland proposal, City Council authorized the Department to negotiate an Amusement Rides Services lease agreement with Funderland. Between 1984 and March 19, 1991, Funderland operated under City Agreement Number 86127.
- The present agreement with Funderland, Inc. (City Agreement Number 91-043), was entered into on March 20, 1991 for a period of 15 years, terminating on February 28, 2006.
- The City agreed to the 15 year agreement in order to ensure continuity of service and to encourage substantial capital investment by Mr. Johnston. The improvements include replacement of the-existing portable, carnival-type rides with child-oriented rides which were customized for the park setting, and the

replacement of the food kiosk and ticket booth. Additional permanent park installed at Funderland's expense, which have become the property of the City include the construction of a sound wall to mitigate the escape of noise from the attraction, pedestrian sidewalks, permanent benches and the planting of colorful flowers and shrubs of a type consistent with the Land Park setting.

- Mr. Johnston's initial estimated cost for the planned permanent park improvements and new rides was \$750,000. The actual value of the permanent park improvements as installed is approximately \$630,608. In addition, Mr. Johnston's new rides are valued in excess of \$848,411, bringing Mr. Johnston's total Funderland investment to more than \$1,479,019.
- Due to an extended rainy season in 1994-95 which reduced expected attendance, as well as unplanned cost overruns for construction of new amusement rides, Funderland failed to make its monthly rent payments from July 1995 through November 1995. The unpaid rent totaled \$76,041.
- In June, 1996, Council approved an installment repayment plan for repayment of the then outstanding debt amortized over a period of two years with a 6% interest rate. The back rent of \$76,041 and interest of \$4,737 totaled \$80,778. The repayment period was to begin in July 1996 and end in June 1998.
- Inclement weather in 1995-96 and 1996-97 again resulted in low Funderland attendance. In addition, Funderland had received no ticket price increases over the past two years, while an increase in the minimum wage resulted in higher labor costs. These factors caused Funderland to once again become in arrears in its repayments as well as in its current rent payments.
- To date, Funderland owes a total of \$115,708. This sum is comprised of the unpaid balance of \$30,584, on the 1996 repayment agreement, and \$85,124 in unpaid monthly rent from 1997. Funderland has made all rental payments presently due for January through April of 1998.

Despite the previously described difficulties the City has experienced in collecting rent due, staff believes that Mr. Johnston's Funderland is a popular, reasonably priced and well-maintained attraction which contributes substantially to the other amenities in the park. Mr. Johnston has been responsive to neighborhood concerns and has worked closely with the City and with various group homes and youth groups to permit visitation at no cost to disadvantaged or troubled children. In 1997, Mr. Johnston's generosity permitted more than 2,400 children to enjoy Funderland's rides free of charge.

In the interest of making all reasonable efforts to collect monies owed the City, and to encourage continuation of a popular public amenity, this report recommends that Council

City Council
AUTHORIZATION TO EXECUTE THE SECOND AMENDMENT TO CITY
AGREEMENT #91-043
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authorize the City Manager to take two actions requested by Sam Johnston, owner and operator of Funderland to assist him in promoting Funderland's financial solvency. These two actions are: (1) the execution of a Second Amendment to City Agreement Number 91-043; and (2) the execution of a new repayment agreement for the \$115,708 in combined past due payments on the 1996 repayment agreement, and delinquent 1997 rent.

Under the existing agreement, Funderland pays to the City 20% of the gross revenue from ticket sales, plus 100% of a Weekend Differential ticket surcharge of \$.15 per ticket. In addition, Funderland currently pays to the City 26.5% of gross revenue from "Optional Services". "Optional Services" include sales of food and beverages, facility rentals and revenue from group sales and birthday parties.

In the first action staff proposes, the Second Amendment to City Agreement #91-043 (attached hereto), the following two changes are recommended:

1. The percentage of revenue to the City from "Optional Services" is reduced from 26.5% to 10% of gross receipts as described in Section 5 of the existing agreement. Based upon 1996 and 1996 actuals, it is estimated that the result of this action will be a reduction in revenue to the City of approximately \$27,000 annually.
2. All payments, whether monthly rent or repayments shall have a due date of the twenty-fifth of the month instead of the present due date of the 20th of the month.

The second action staff proposes, the new Repayment Agreement (attached) includes the following stipulations:

1. All rent due from January, 1998 forward must be kept current.
2. The \$115,708 in past due rent shall be repaid over a fifteen-month period beginning in June 1998 and ending in September 1999 according to the Repayment Agreement. The \$115,708 does not include a total of \$14,820 in penalties and interest on 1997 rent arrearages which accrued as agreed in the First Amendment to 91-043 in 1997.
3. The parties agree that these penalties and interest will be forgiven if Funderland makes current rent payments by their due dates and honors all terms of the Repayment Agreement. In the event of any default, the \$14,820 shall be added to the amount due to the City from Funderland. In addition, interest shall accrue at the rate of 1.5% per month on any delinquent repayments. Penalties and interest on current and future rent payments shall be as set forth in Agreement #91-043 as amended.

4. All payments, whether monthly rent or repayments shall have a due date of the twenty-fifth of the month.
5. In the event of any default, the City may begin procedures to terminate Funderland's lease for nonpayment pursuant to Section 25. Default and Termination of the current agreement (City Agreement #91-043).

Rent received from Funderland is split three ways among the Park Fund, the Zoo Fund and the Fairytale Town Trust. In particular, the two non-profit entities, the Zoo and Fairytale Town rely substantially on this revenue to support ongoing operations. The approval of the proposed agreement for the repayment of the \$115,708 now due will contribute to the stability of these entities. In addition, revenue deposited into the Park Fund is used primarily for capital improvements such as the current lake improvement project. Termination of the Funderland agreement, while an option, is deemed a less attractive alternative as it may not result in recovery of funds owed to the City. In addition, it is uncertain whether a suitable substitute amusement rides purveyor would be immediately available to assume operation of the facility.

Given Mr. Johnston's substantial financial investment in the site, staff believes that the repayment proposal described herein provides a reasonable opportunity for the City to recover the rent owed while enabling the Lessee to continue to operate this popular attraction. It is also believed that the stipulations imposed on the new repayment agreement, which include a provision for interest recovery and may include termination in the event of late payment, provide a strong incentive for the Lessee to comply with the terms of the agreement.

FINANCIAL CONSIDERATIONS:

Under the proposed Repayment Agreement, Funderland will repay a total of \$115,708 beginning in June 1998 and ending in September 1999. This sum includes \$30,584 in principal and interest from the 1996 repayment agreement, as well as unpaid rent from 1997 in the amount of \$85,124. No interest will be charged provided that Lessee remains current on all payments.

The funds are deposited into the Park Fund, the Zoo Fund and the Fairytale Town Trust.

ENVIRONMENTAL CONSIDERATIONS:

The approval of the proposed amendment and the repayment agreement is exempt from CEQA review pursuant to Section 15378(b)(3):

"Continuing administrative or maintenance activities, which are not conducted in

conjunction with a project subject to CEQA review".

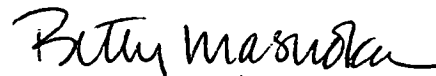
POLICY CONSIDERATIONS:

The approval of the new repayment agreement proposed in this report is consistent with City policy to take action to ensure the stability of the enterprise funds, while providing attractive amenities at a reasonable cost.

MBE/WBE:

None. No supplies or services are being purchased pursuant to this report.

Respectfully submitted,



Betty Masuoka,
Deputy City Manager

RECOMMENDATION APPROVED:

APPROVED



William H. Edgar
City Manager

APPROVED
BY THE CITY COUNCIL

JUN 4 1998

OFFICE OF THE
CITY CLERK

RESOLUTION NO. 98-218

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**AUTHORIZATION TO EXECUTE THE SECOND AMENDMENT TO
CITY AGREEMENT #91-043 (AMUSEMENT RIDES IN WILLIAM
LAND PARK); AND THE REPAYMENT AGREEMENT BETWEEN
THE CITY OF SACRAMENTO AND FUNDERLAND, INC.**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

The City Manager is authorized to execute:

1. The Second Amendment to City Agreement Number 91-043, as attached hereto; and
2. The Repayment Agreement between the City of Sacramento and Funderland, Inc., as attached hereto.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO: _____

DATE ADOPTED: _____