



Legislation Details (With Text)

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Type:	Presentation	Status:			Consent Agenda
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On agenda:	3/22/2018	Final action:			
Title:	Presentation, possible action, and discussion of an agreement between the City and the Rotary Club of College Station and College Station Noon Lions Club for the development of the Fun For All Playground at Central Park.				
Sponsors:	David Schmitz				
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Attachments:	CS Fun For All Agreement-Rotary and Lions Clubs				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion of an agreement between the City and the Rotary Club of College Station and College Station Noon Lions Club for the development of the Fun For All Playground at Central Park.

Relationship to Strategic Goals:

- 1) Providing Core Services and Infrastructure

Recommendation(s): Staff and Parks and Recreation Advisory Board recommend approval.

Summary: This agreement establishes the responsibilities of the City of College Station and the Clubs in the design development and construction of a Fun For All Playground in Stephen C. Beachy Central Park and to provide for effective cooperation in the implementation of the project provisions.

Budget & Financial Summary: \$500,000 City commitment from Parkland Dedication Funds: Zone 3 and Zone CD

Reviewed and Approved by Legal: Yes

Attachments:

- 1) Agreement with exhibits

**AGREEMENT BETWEEN THE CITY OF COLLEGE STATION,
THE ROTARY CLUB OF COLLEGE STATION AND COLLEGE STATION NOON
LIONS CLUB FOR THE DEVELOPMENT
OF THE FUN FOR ALL PLAYGROUND AT CENTRAL PARK**

THIS AGREEMENT is entered into between the City of College Station, a Texas Home-Rule municipality (the "City"), the Rotary Club of College Station and the College Station Noon Lions Club both referred to as (the "Clubs") and all entities collectively the "Party" or "Parties", for purposes of the development of a Fun for All Playground (the "Playground" or "Project") at the Stephen C. Beachy Central Park (the "Park").

WHEREAS, the City is the owner of Stephen C. Beachy Central Park located at 1000 Krenk Tap Road, College Station, Texas; and

WHEREAS, the Park is a valuable recreational resource for the community; and

WHEREAS, the City is committed to ensuring that improvements to the Park serve the best interests of the community; and

WHEREAS, the Clubs are dedicated to enhancing the Park for the benefit of the community; and

WHEREAS, the Clubs are willing to contribute financially and provide oversight to the City for the design, development, and construction of a Fun for All Playground at Central Park; and

WHEREAS, the City is willing to accept the financial and other resources offered by the Clubs for the design, development, and construction of a Fun for All Playground at Central Park;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and performance by the parties hereto, it is hereby agreed as follows:

- 1. Purpose.** The purpose of this Agreement is to define the responsibilities of the City and the Clubs in the design, development, and construction of a Fun for All Playground in Stephen C. Beachy Central Park and to provide for effective cooperation in the implementation of the provisions set forth herein.
- 2. Term.** This Agreement shall commence on the date of the last signature making it fully executed and shall remain in effect for three (3) years or until the Fun for All Playground project is fully completed, or the Agreement is terminated earlier by either Party, as provided herein. The Clubs shall proceed with its obligations in a timely and diligent manner, but shall not be responsible for delays caused by others beyond its control or that were not reasonably foreseeable.

3. Obligations of the Parties.

The City shall perform the following obligations in regard to the Playground:

- a. Assist in planning for the new Fun for All Playground in the Park
- b. Prepare, develop and deliver to the Clubs a phased project schedule indicating the timing and cost to be incurred on each phase of project construction.
- c. Oversee site development of the Playground
- d. Ensure the site has proper accessibility
- e. Provide all architectural, construction, and engineering services to design, permit, and construct the project
- f. Name the Playground as the “Fun for All Playground at Central Park”
- g. Authorize the Clubs to place City-approved plaques on selected areas within the Playground to recognize those persons or organizations who donate in-kind services to construct the Playground or donate money to the Clubs to pay for the construction of the Playground. In Kind donations from the Rotary Club must meet design and construction specifications determined by the City of College Station authorized individuals before donated equipment could be used at the Park.
- h. Manage and operate all portions of the Playground project pursuant to this Agreement
- i. Construct all necessary facilities to provide access and use of the Playground within the Park
- j. Track and monitor the cost of the Playground design and construction for each phase of the project. The total cumulative liability for all phases and aggregate funding obligation of the City for this Playground project, including all of the described responsibilities contained in this Agreement, shall not exceed five-hundred thousand dollars (\$500,000.00), unless otherwise increased by the City Council.
- k. Upon full execution of this Agreement, funds will be escrowed by the Clubs to the City on a not-to-exceed basis for each Playground phase. The City will initiate the construction process for each phase, after that phase is fully funded by the Clubs, as further depicted in Exhibit A and Exhibit B.
- l. Maintain and repair the Playground

The Clubs shall perform the following obligations in regard to the Playground:

- a. The Clubs shall provide necessary financial funding for the construction of each phase of the Playground Project in cash, prior to the commencement of each phase, as depicted in Exhibit B. (Phase Funding Milestones), with a total Playground project not-to-exceed amount of four-million dollars (\$4,000,000.00), and reserves the right to voluntarily contribute additional sums as it deems necessary and appropriate, subject to the City’s approval which will not unreasonably be withheld.
- b. Assist the City in the planning, design, and site development of the playground
- c. Assist the City in the selection of playground equipment and amenities for the site
- d. Coordinate with the City prior to the placement of any City-approved plaques recognizing persons or organizations that donate cash or in-kind services for the construction of specific facilities or features within the Playground project.
- e. The Clubs in coordination with the City agree to ensure compliance with architectural plans for all In Kind donations to be used or installed at the Playground prior to the Clubs acceptance in order to ensure the quality of design and construction specifications as determined by the City of College Station are met.

4. **Administration.** This Agreement, including design and construction, shall be administered by the City.

5. **Project Records.** Upon completion of each phase, all Project records shall be held by and shall be the exclusive property of the City.

6. **Independent Contractor.** The Clubs and the City understand and expressly agree that the Clubs are an independent contractor in the performance of each and every part of this Agreement. The Clubs, as independent contractor, assumes the entire responsibility for carrying out and accomplishing the fundraising and obligations required for its performance under this Agreement. The Clubs, as an independent contractor, shall have the sole judgment of the means, mode or manner of the actual performance of the fundraising and obligations required for its performance under this Agreement. Additionally, and as an independent contractor, the Clubs and its officers, employees (if any), volunteers, and agents, shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, retirement, workers' compensation, and/or insurance coverages. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the Clubs and/or any officer, employee (if any), volunteer, or agent of the Clubs and the City.

7. **No Third Party Rights.** This Agreement is entered into for the sole benefit of the Parties. It shall confer no benefits or rights, direct or indirect, tangible or intangible, on any third parties. No person or entity other than the City and the Clubs may rely upon or enforce any provision of this Agreement.

8. **Indemnification and Hold Harmless.** To the extent permitted by the Constitution and Texas law, each Party agrees to maintain responsibility and assume liability in the performance of this Agreement for its own wrongful and/or negligent acts or omissions, and those of its officers, agents, employees, or volunteers to the fullest extent allowed by law. The provisions of this Section shall survive the termination or expiration of this Agreement. Nothing contained in this Section or this Agreement shall create a liability or a right of indemnification in any third party.

9. **Liability.** Each Party assumes any and all risks of personal injury (including death) and property damages (including destruction) attributable to the negligent acts or omissions of its officers, agents, employees, and volunteers in the performance of this Agreement. Nothing contained in this Agreement shall be construed or interpreted as a waiver of sovereign immunity of the City.

10. **Nondiscrimination.** During the performance of this Agreement, the Parties shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, and any other classification protected under federal, state or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under

this Agreement.

11. Compliance with Law. The Parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

12. No City Insurance. It is understood the City does not maintain liability insurance for the Rotary Club or its officers, agents, employees, volunteers, contractors and subcontractors. The Clubs agree to procure and maintain their own liability insurance, at levels the Clubs deem appropriate.

13. Integration. This Agreement contains all of the terms and conditions agreed to by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, are deemed to exist or to bind either of the Parties.

14. Modifications. The Parties may modify this Agreement but no proposed changes or modifications shall have validity or become binding on either party unless such changes or modifications are in writing and executed by both Parties.

15. Severability. If a court of competent jurisdiction holds any part, term or provision of this Agreement illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held invalid. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Texas, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.

16. Laws, Regulations, and Venue. Each party will comply with all laws, ordinances, regulations, and building code requirements applicable to its role under this Agreement. This Agreement is governed in accordance with the laws of the State of Texas, with venue, for all purposes, being in Brazos County.

17. Assignment of Interest. Neither party will assign or transfer any interest in this Agreement without prior written consent of the other party.

18. Successors and Assigns. The City and the Clubs each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.

19. Conflict of Interest. The Clubs warrant that neither it nor any of its officers, employees (if any), or agents have any financial or personal interest that conflicts with the execution of this Agreement. The Clubs shall notify the City of any conflict of interest due to any other clients, contracts, or property interests.

20. Waiver of Breach. A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default

to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

21. Dispute Resolution. The City and the Clubs shall meet to negotiate any outstanding issues related to the development of the Playground and the implementation of this Agreement in order to resolve any disputes through cooperation and negotiation to the greatest extent possible.

22. Unavailability of Funds. If funds to finance the obligations pursuant to this Agreement become unavailable, the Parties may terminate this Agreement with no less than ten (10) business days' notice in writing to each Party. The City shall have no continuing or ongoing financial liability pursuant to this Agreement if so terminated.

23. Termination. The City may terminate the Project and this Agreement, at any time, for convenience. In the event of such termination the City will notify the Clubs in writing and the Clubs shall cease performance of its obligations immediately. The City shall have no continuing or ongoing financial liability pursuant to this Agreement if so terminated. This provision shall control if there is a conflict between this provision and other provision(s) in this Agreement.

24. Survival. Any provision of this Agreement which imposes an obligation after expiration or termination of this Agreement shall survive the expiration or termination and shall bind the Parties.

25. Notices. Unless otherwise stated herein, all notices and demands are required in written form and sent to the parties at their addresses as follows:

TO CITY:

The City of College Station
City Manager
1101 Texas Avenue S.
P.O. Box 9960
College Station, Texas 77842

With a Copy to:

Legal Department
1101 Texas Avenue S.
P.O. Box 9960
College Station, Texas 77842

TO CLUBS:

THE ROTARY CLUB OF COLLEGE STATION

Fun for All Playground Committee
P.O. Box 9745
College Station, Texas 77842

COLLEGE STATION NOON LIONS CLUB

P.O. Box 112
College Station, Texas 77842

26. Exhibits and Attachments. All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.

27. **Amendments.** This Agreement may only be amended by written instrument approved and executed by the Parties.

28. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations.

List of Exhibits:

- A. Playground Project Phases
- B. Phase Funding Milestones

ROTARY CLUB OF COLLEGE STATION

By: Werner A. Rose
Printed Name: Werner G. Rose
Title: Chair - FFAP Project
Date: Feb. 20, 2018

COLLEGE STATION NOON LIONS CLUB

By: J. David Gerling
Printed Name: F. David Gerling
Title: Chair of FFAP
Date: 2/20/2018

CITY OF COLLEGE STATION

By: _____
City Manager
Date: _____

APPROVED:

John A. Harts
City Attorney
Date: 2/23/18
Bill Kerst
Assistant City Manager/CFO
Date: 2-26-18

Exhibit A.
Playground Project Phases



V.E. Preliminary Cost Estimate: Phase 1 02/07/18 - 4:00pm
±2.55 Acre 'Fun For All Playground' Special Needs Park

AREA/ITEM	SF/LF	BUDGET \$	TOTAL
> OVERALL PARK AREA & NEW PARKING			
1 Pedestrian Flatwork (w/control joint pattern)	2175	6.00	\$13,050.00
2 Asphalt Parking Lot (1 lot - near softball fields)	7610	5.00	\$38,050.00
3 Site Lighting (rough estimate)	n/a	>>>	\$135,000.00
4 Concrete Splash Pad & Sidewalk(from parking lot) (+/-)	925	5.00	\$4,625.00
5 Fencing - New (LF)	600	50.00	\$30,000.00
6 Landscape Areas (+/-)	3000	3.00	\$9,000.00
> SUBTOTAL			\$229,725.00
> PLAY AREAS 2 & 3 (*Estimate provided by 'Landscape Structures')			
7 Play Equipment** - Areas 2 & 3	(see attachment)		\$237,512.00
8 Shades** (Includes rebar, electrical provisions & engineered drawings)	(see attachment)		\$108,529.00
9 Shredded Bonded Play Areas & Install - Areas 2 & 3	5842	12.00	\$70,104.00
~ ** Freight & Installation Not Included			
> SUBTOTAL			\$416,145.00
> *WATER PLAY ZONE: Phase 1			
10 Splash Pad Concrete Coating/Surfacing	3490	9.00	\$31,410.00
11 Splash Pad Equipment Package('Fountain People' proposal)	1	62,479.00	\$62,479.00
12 Freight / Crating	1	2,168.68	\$2,168.68
13 New Surface Storm Drain*	n/a	*rough est.	\$50,000.00
> SUBTOTAL			\$146,057.68
>>> COMBINED SUBTOTALS			\$791,927.68
>>> Soft Costs: (percentage)		10%	\$79,192.77
>>> General Conditions: (percentage)		15%	\$118,789.15
>>> GRAND TOTAL: [Prelim. Cost Estimate PHASE 1: V.E. OPTION]			\$989,909.60