

Staff Report

AMES MIRACLE LEAGUE FIELD AND INCLUSIVE PLAYGROUND

June 11, 2019

BACKGROUND:

In summer 2015, initial meetings began to gauge interest in the concept of constructing an inclusive playground and Miracle League field. A Steering Committee was developed to move this project forward and on October 25, 2016, City Council directed staff to proceed with plans for the construction of a Miracle League Field and Inclusive Playground in Inis Grove Park.

As plans were being developed and the Steering Committee began fundraising, The Ames Foundation (Foundation) agreed to serve as the fiscal agent for the funds raised and subsequently to oversee the construction of the project. As such, the City funded the design of the Miracle League Field and Inclusive Playground (MLFIP), but could not put any funding toward the project per state law regarding bidding public improvements.

On July 31, 2018, City Council approved an agreement (Attachment A) between the City and the Foundation for construction of the MLFIP at Inis Grove Park. The agreement outlines multiple responsibilities of both parties.

The Foundation has been working with Harold Pike Construction (HPC), Ames to serve as the general contractor for the project. Based on the plans and specifications provided by the City, HPC estimated the project cost to be \$2,370,000. This figure does not include potential in-kind donations of construction services and materials. The Foundation will pursue in-kind donations relating to the construction of this project. However, they are not able to pursue these donations until a letter to proceed is given to HPC. Because there has been no conversation with the sub-contractors, the Foundation is unable to provide an estimate for in-kind donations at this time.

The Foundation, HPC, and City staff have met to develop a list of possible cost saving measures. These measures will result in reducing the overall project cost to \$2,148,000 or \$2,027,400, depending on which items are selected. These items are described in detail in the Plans and Specifications Modifications section below.

As of June 6, 2019, the Foundation has received \$1,363,946 cash in hand, and \$462,833 in pledges, for a total of \$1,826,779 in cash or pledges. The outstanding pledges include a local service club (\$300,000), Harrison & Brittany Barnes Foundation (\$100,000 – third payment), and six others (\$62,833). Additionally, the Foundation reports that twelve requests are still outstanding, in the amount of \$480,000. A Community Attraction & Tourism grant application is also being written for \$200,000, which is due July 15, 2019.

HPC has indicated that they must have a decision by mid-June whether the project will proceed this summer, or they will be unable to secure the required subcontractors, equipment, and materials. If HPC does not receive a commitment from the Foundation to begin construction by mid-June, the project construction will be delayed until 2020.

HPC estimates that if construction begins in June, the project can be completed this year with one major exception: the safety surfacing. Because surface and air temperatures need to be above a certain temperature to properly cure, the safety surfacing will not likely be able to be completed before temperatures drop in the fall. Therefore, this step will need to be completed once warmer weather returns in spring 2020, before the playground and field can be opened to the public.

It should be pointed out that the construction of this project will have a significant impact to Inis Grove Park. A portion of the park will not be available since the project area, which includes the southern portion of the Duff Avenue parking lot, will be a construction site. The Walnut shelter will not be available during this time, however, Shagbark and Red Oak will be. In addition to the normal construction vehicles coming and going, 7,000 cubic yards of dirt will need to be trucked off site. This will equate to over 700 truckloads.

AGREEMENT BETWEEN THE CITY AND THE AMES FOUNDATION:

Section 2 of the existing agreement between the City and the Foundation reads as follows (Attachment A):

2. The Foundation shall approve and pay expenditures or make disbursements from the Fund in order to construct the MLFIP. The MLFIP shall be built in accordance with plans and specifications approved by the City and The Ames Foundation at a later date. No construction shall begin on the Project until sufficient funds have been raised and/or pledged to complete the Project as described in the plans and specifications. Later approval of the plans and specifications by the City and The Ames Foundation is a condition precedent to the obligations to perform this contract. (Emphasis Added)

Recent discussions between the parties have raised the following two issues:

- a) **City staff believes this provision means the Foundation must have pledges and cash in hand equal to the amount required to construct the project in accordance with the approved specifications before beginning construction. The Foundation Board of Directors, however, interpret this provision differently, and has approved starting the project now that 90% of the funds have been pledged or collected. They believe that because \$1,826,916 have been raised of a new total project cost estimate of \$2,027,400 (assuming the recommended cost cutting measures are acceptable-Attachments B & C),**

then this 90% ratio satisfies the definition in the agreement that “sufficient funds have been raised.”

- b) The second discussion point between City staff and the Foundation deals with whether or not City Council can take any action on this project without it becoming a City project. As a reminder, because this is planned to be a construction project with no City funds, the Foundation is not bound by the public improvement bidding law. The Foundation is concerned that if the City directs the Foundation’s work, beyond normal city functions (i.e. Development Review Committee, etc.), then the City may be in violation of state law.

Staff believes that the two conditions outlined in Section 2 are appropriate. Before allowing a third party to construct a project on City property it is appropriate to make sure that the quality of the work as defined by the plans and specifications is approved by the City Council and that there have been sufficient funds raised to assure that the project will be completed as planned. Lack of sufficient funding could result in an unfinished project or the quality of the project jeopardized by ill-advised cost cutting. Since the responsibility to maintain the facility will shift to the City once it is donated, these are important issues for the City Council.

The City Attorney has discussed these two items and the agreement with the Foundation’s attorney. It has been concluded that “sufficient funds” is not defined and open to interpretation. However, language in the agreement does stipulate that the further obligations of the agreement do not become effective until the project plans and specifications are approved by the City and the Foundation. **If City Council does not wish to proceed prior to all funds being raised, it should not approve the plans and specifications.**

PLANS AND SPECIFICATIONS MODIFICATIONS:

The Engineer’s estimate for this project was \$2,087,122 which included a 5% contingency. Subsequently, HPC conducted a review of the plans and specifications and estimated the cost to be \$2,370,000 which includes a \$50,000 contingency. In discussions between the Foundation, HPC, and the City, it was determined that some items included in HPC’s estimate was work that was intended to be done by others. In addition, some modifications to the plans were discussed which brought the cost estimate to \$2,148,500. These reductions are shown in Attachment B.

In order for the Foundation to ensure the funds raised and/or pledged was 90% of the project cost, another round of cost reduction items were discussed and if implemented would reduce the project cost estimate to \$2,027,400. These items are shown in Attachment C.

City staff feels the cost reduction measures highlighted above will not compromise the overall quality of the project. Furthermore, the Foundation has indicated that as additional funds are raised throughout the construction process, it may add back items that were eliminated from the plans for cost-saving purposes.

POTENTIAL RISKS:

The Ames Foundation and other partners in this project have made extraordinary efforts to raise funds for this project. Additionally, the Foundation has taken on a much larger role in fundraising than was originally planned. **However, there remains a shortfall between the actual cash in hand and the estimated cost for the project.** This project is unique in that many of the donors have contributed towards specific features within the playground and Miracle League Field. **Therefore, it is not possible to reduce the scope of the project any further to meet the budget without eliminating essential aspects of it.**

If construction begins without all funding in hand, there is risk that some portion of the \$462,969 in pledges may be uncollectable. Similarly, there is no guarantee that the outstanding requests and grant applications will be successful. If these funds are not secured before the project is complete, it may cause delays in the project's completion. It is important to remember that due to state law and City policies regarding bidding of public improvements, any funding shortfall cannot be made up by City funds without serious legal implications.

There also are significant risks from waiting until all of the funds have been raised. If there are delays in approving the plans and specifications, HPC has indicated it will not be able to construct the project this summer. Therefore, construction would be delayed to next year at the earliest, and the costs for construction materials and services are likely to rise.

The Foundation has expressed confidence that they can raise additional funds to finance the \$2,027,400 project. However, while optimistic that additional funds can be secured to meet the cost of the \$2,148,500 project, they cannot guarantee this will happen. If the City requires the full \$2,148,500 project to be built, the Foundation has indicated that they might have to withdraw from participation in the project, and seek to turn over the funds raised to date to the City.

OPTIONS:

1. If Council agrees with the cost reductions shown in Attachment B for an estimated project cost of \$2,148,500, it should:
 - a. Approve the plans and specifications for the Miracle League Field as submitted including the cost-saving reductions shown in Attachment B.
 - b. Allow the Foundation to proceed with construction.

2. If Council agrees with the cost reductions shown in Attachment B and C for an estimated cost of \$2,027,400 and believes the Foundation will raise the additional funds after starting construction, it should:
 - a. Approve the plans and specifications for the Miracle Field and Inclusive Playground with the modifications shown in Attachment B and C, and
 - b. Allow the Foundation to proceed with construction.

3. If Council decides that all funds should be received prior to beginning construction, it should not approve plans and specifications at this time and, therefore, not allow the Foundation to proceed with construction.

STAFF COMMENTS:

The City staff is enthusiastically in support of the efforts to date of the Steering Committee and The Ames Foundation. It must be remembered that this group of volunteers is spearheading an effort to construct a \$2,000,000 amenity for our community without using property tax funding. Furthermore, it appears that those involved with raising funds remain dedicated and are optimistic that funds can be secured to complete the \$2,027,400 project with the cost cutting measures identified in Attachments B & C (Option 2).

This report is meant to inform the City Council of the status of this effort and seek direction regarding how to proceed at this point in time. The main question to be answered by the City Council is whether or not the amount raised to date in the form of cash and pledges is sufficient to garner your support for the project to proceed at this point. If the Council concludes that this is the case, the best course of action at this time would be to approve Option 2. Any additional funding secured in excess of the \$2,027,400 could be used to restore some of the reductions identified in Attachments B & C.

Attachment A

This Agreement, made and entered into this ____ day of _____, 2018, by and between **The Ames Foundation**, an Iowa domestic nonprofit corporation organized under Iowa Code Chapter 504 (hereinafter sometimes called "The Foundation"), and the **City of Ames**, a municipal corporation organized and existing pursuant to the laws of the State of Iowa (hereinafter sometimes called "City");

WITNESSETH THAT:

WHEREAS, members of the Ames community have expressed interest in the construction of a Miracle League Field and Inclusive Playground ("MLFIP") in Ames, and

WHEREAS, The Ames Foundation has established a designated account for the purpose of receiving and disbursing funds for the construction of a MLFIP in Ames, and

WHEREAS, The Ames Foundation intends to serve as the Project Manager for the construction of the MLFIP, and

WHEREAS, The MLFIP shall be constructed upon property owned by the City of Ames, which has been identified as Inis Grove Park (the "Park"), and

WHEREAS, after completion of the MLFIP, the City shall enjoy sole control and possession of the MLFIP;

NOW, THEREFORE, the parties hereto agree as follows:

1. The Foundation has established a designated account held by a third party financial institution for the collection of monetary contributions (donations, grants or other gifts) towards the completion of the Miracle League Field and Inclusive Playground Project ("Project"). This account shall be known as the Ames Miracle Field and Playground Fund ("Fund"). The Foundation represents and warrants that no governmental funds will be deposited in the Fund, nor shall any governmental funds be otherwise used in the construction of the Project.

2. The Foundation shall approve and pay expenditures or make disbursements from the Fund in order to construct the MLFIP. The MLFIP shall be built in accordance with plans and specifications approved by the City and The Ames Foundation at a later date. No construction shall begin on the Project until sufficient funds have been raised and/or pledged to complete the Project as described in the plans and specifications. Later approval of the plans and specifications by the City and The Ames Foundation is a condition precedent to the obligations to perform this contract.

3. The Foundation shall contract with a licensed general contractor to oversee and

manage the actual construction of the facilities. The general contractor shall contract with such sub-contractors as are necessary to complete the Project. The City shall have the right to attend meetings between The Foundation and the general contractor to ensure conformance with the plans and specifications and to prepare for interruptions to the regular activities within the Park.

4. The Foundation shall ensure that the general contractor and any subcontractors shall conduct their work in accordance with any applicable building and construction codes, shall obtain any permits required by state or local law, and shall conduct construction activities in accordance with all applicable environmental laws. The Foundation understands that the Project is being constructed in an active City Park, and shall ensure the contractor takes measures that meet the satisfaction of the City to secure the construction site and minimize any interference with park and recreation activities occurring elsewhere within the park.

5. The Foundation shall promptly report to the City any major or significant change orders requested by the general contractor. The City shall review whether such changes are compatible with the plans and specifications as originally agreed to. The Foundation may only approve change orders with the assent of the City. Such assent by the City shall not be unreasonably withheld. The City may make inspections of the Project during its construction, and shall identify any conditions observed that differ from the approved plans and specifications, which would cause the City to reject the completed Project.

6. Once construction begins, the Project shall be substantially performed and completed as agreed by the parties in the plans and specifications prior to the commencement of construction. The Foundation shall notify the City as soon as possible and provide a proposed plan to rectify the situation if, after the commencement of construction, it is determined that site conditions require either: a) alterations to the Project that would reduce the fundamental usefulness of the Project to the public, or b) increased Project costs (including contingency) greater than \$50,000 beyond available funding.

7. It is understood by the Parties that The Ames Foundation will assist the Project Steering Committee (an entity not a party to this Agreement) in fundraising for this Project.

8. For every gift, donation, contribution or any transfer of funds designated for the benefit of the Fund, The Ames Foundation will charge a one-time administrative fee not to exceed 2% of the amount received. This administrative fee shall become the property of The Ames Foundation to use as it deems appropriate. The balance of monies received shall be held by The Ames Foundation for the benefit of the Project, until its completion.

9. At the City's request, the Foundation shall provide a final financial report to the City of Ames upon completion of the Project.

10. The Foundation shall take reasonable steps to ensure that the contractor working on the Project shall maintain commercially appropriate liability and contractor insurance coverages at all times during the construction of the Project, which shall include insurance coverage for subcontractors. The limits and terms of such coverage shall meet the requirements established by the City's Risk Manager for projects of a similar scale occurring on City property.

11. Upon completion of the Project, the City will be entitled to make a final inspection of the Project and determine whether to accept the Project as constructed. The Foundation shall provide to the City a copy of the certification from the general contractor that the Project has been constructed lien-free and in accordance with the plans and specifications. After acceptance of the Project by the City, possession of the MLFIP will be turned over to the City of Ames, and The Foundation will make final payment to the general contractor. Thereafter, the Foundation will have no further responsibilities for the operation or maintenance of the Miracle League Field or Inclusive Playground.

12. Any funds raised in support of the Project in excess of the amount necessary for construction shall be held in the Fund by The Foundation for reasonable use as directed by the City for future maintenance, repairs or expansion of the MLFIP. The Ames Miracle Field and Playground Fund will not receive any earnings, according to the established policy of The Ames Foundation. The City will request the endowment funds from The Foundation as they are needed. Alternatively, the Foundation may elect to turn any excess funds over to the City for the sole purpose of maintenance, repairs or expansion of the Field and Playground.

13. This agreement will remain in effect until the completion of the Project and the exhaustion of any excess funds as described in paragraph 11 of this Agreement, or until terminated by both parties in writing.

14. This agreement may only be amended in writing with the mutual consent of The Ames Foundation and the City of Ames.

This agreement is entered into this _____ day of _____, 2018

The Ames Foundation

BY : _____

Title: _____

Date: _____

The City of Ames

BY : _____

Title: _____

Date: _____

Attachment B

Modifications to the Plans and Specifications to Reduce Project Cost to \$2,148,500

(If additional funds are raised, items could be added back in to the project)

Item:	Justification:	Savings:
1. Use black vinyl coated fencing instead of a decorative fence	Black vinyl coated fencing has been used in other City parks and does not jeopardize safety	\$ 20,000
2. Reduce concrete under the field and equipment to from 5" to 4"	The consultant indicates 4" meets the minimum depth as required by the manufacturer	\$ 11,000
3. Eliminate walkway by moving shelter closer to field	Having the shelter closer to the field is more convenient for users	\$ 5,600
4. Duff Ave. sidewalk by others	This was never intended to be the Foundation responsibility	\$ 40,000
5. Parking lot striping by others	This was never intended to be the Foundation responsibility	\$ 3,400
6. Reduce landscaping	This will provide less plant material but not impact the overall look of the park	\$ 5,000
7. Reduce limestone blocks	This will reduce the number of blocks but they are not a functional component of the park	\$ 14,000
8. Eliminate surfacing on the hillside	This will not impact the functionality of park if this is eliminated	\$ 7,000
9. Reduce benches and trash receptacles	This will not impact the functionality of park if these are reduced	\$ 4,000
10. Reduce the shelter size from 12' x 20' to 12' x 16'	The reduction is still an appropriate size shelter for this setting	\$ 4,000
11. Reduce the two smaller bleachers with the large one remaining	Other communities have indicated many people bring chairs with them and most spectators do not use bleachers	\$ 10,000
12. Reduce the allocation for the sensory plaza	Scaling back on this will not impact the purpose of the plaza	\$ 50,000
13. Reduce the allocation for the entrance feature	Providing a simpler entrance feature will not impact the overall park	\$ 30,000
14. Eliminate picnic tables and use what is in the park	Picnic tables are already in the park that can be used for this purpose	\$ 17,500
TOTAL		\$221,500

Attachment C

Additional Modifications to the Plans and Specifications to Reduce Project Cost to \$2,027,400

(If additional funds are raised, items could be added back in to the project)

Item:	Justification:	Savings:
1. Eliminate Miracle League Field lighting	This can be eliminated, but should be added back in if additional funds are raised	\$ 39,100
2. Eliminate contingency	The Foundation will incur this expense if necessary	\$ 50,000
3. Eliminate Snyder & Associates retainer	The Foundation will incur this expense if necessary	\$ 5,000
4. Sidewalk to Duff Ave. by others	This could be included in Parks & Recreation's path project for Duff Ave. and 24 th Street	\$ 15,000
5. Drinking fountain by others	A fountain is purchased for this park but has not been installed so it is not damaged during construction	\$ 4,000
6. Eliminate concrete east of Walnut shelter	This is not relevant to the success of the project	\$ 2,000
7. Eliminate the concrete apron around the restroom	The concrete apron is part of the restroom project	\$ 2,000
8. Eliminate the scoreboard expense	A scoreboard has been donated so this expense is not needed	\$ 4,000
TOTAL		\$121,100