

COUNCIL ACTION FORM

SUBJECT: ACCEPTANCE OF MIRACLE LEAGUE FIELD AND INCLUSIVE PLAYGROUND FROM THE AMES FOUNDATION

BACKGROUND:

On July 31, 2018, the City Council approved an agreement with The Ames Foundation (TAF) for construction of a Miracle League Field and Inclusive Playground (MLFIP) at Inis Grove Park. The agreement (Attachment A) outlined the roles of TAF and the City for this project.

As a reminder, the main points of the agreement, along with a summary of each activity, is shown below:

- 1. The Ames Foundation will collect and hold contributions for the project.**

TAF did collect and hold contributions, but more importantly, served as a major fundraiser for this project. Additionally, a Community Attraction and Tourism (CAT) grant in the amount of \$200,000 was secured. In all, \$2,283,562 has been secured in monetary donations.

- 2. The plans for the project will be provided by the City and the scope of the project will be agreed to by the City and The Ames Foundation prior to commencement of construction.**

City Council approved the plans and specifications for the project on June 11, 2019 and gave TAF approval to begin construction.

- 3. The Ames Foundation will secure a general contractor to construct the project in Inis Grove Park and will make payments as required for the project.**

TAF contracted with Harold Pike Construction (HPC) to construct the MLFIP and has made payments as required for the project.

- 4. No City funds will be used in the construction of the project.**

The City did expend \$62,500 for the design of the MLFIP; however, no City funds have been used for the construction of this project.

5. **The Ames 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.**

Attachment B is a letter from Snyder & Associates verifying the project has been constructed in accordance with the design and applicable codes. Attachment C from HPC verifies the project has been constructed lien-free.

6. **The City is entitled to make a final inspection and obtain a final financial report upon the completion of the project.**

City staff has made a final inspection and agrees the project has been completed according to the design. A current financial report is shown in Attachment D. The final report will not be available until TAF closes out the CAT grant in 2021. The City did agree to construct three projects as part of the CAT grant match including renovating the Duff Avenue restroom (completed); constructing a new restroom in Inis Grove Park (completed); and installing a shared use path along 24th Street and Duff Avenue (out for bid). The shared use path is expected to be completed by June 1, 2021.

7. **Any funds raised in excess of the amount necessary to construct the project will be either kept by the Foundation for future improvements to the project area or turned over to the City for future maintenance, repairs, or expansion.**

At this time, it appears there will be no excess funds available for future improvements, maintenance, or repairs.

As noted above, TAF has completed the requirements outlined in the agreement. In addition, TAF has signed a Bill of Sale, Attachment E, which conveys, transfers, and assigns to the City the MLFIP property. The next step is for City Council to receive possession and ownership of the MLFIP from The Ames Foundation.

ALTERNATIVES:

1. Accept the transfer of the Miracle League Field and Inclusive Playground and receive possession and ownership from the Ames Foundation to the City of Ames.
2. Refer this item back to staff with further direction.
3. Do not accept the transfer of the Miracle League Field and Inclusive Playground.

CITY MANAGER’S RECOMMENDED ACTION:

The Miracle League Field and Inclusive Playground project provides a significant improvement to the Ames parks system. It will provide a recreational amenity for residents of all ages and abilities to enjoy. The project involved a number of dedicated individuals and organizations contributing their efforts. Specifically, The Ames Foundation is to be commended for its efforts in fundraising, construction management, and communication with the City as related to this project! **It is not often that Ames residents are the beneficiaries of a project of this magnitude that has no City funds included as part of the construction. The Ames Foundation and everyone else involved cannot be thanked enough!**

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1 as stated above.

This Agreement, made and entered into this 31st day of July, 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.

12 - BCP

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 31st day of July, 2018


The Ames Foundation

BY 

Title: President

Date: July 31, 2018

The City of Ames

BY : 

Title: Mayor

Date: 7-31-18



November 6, 2020

John Williams
HPC, L.L.C.
120 N. Sherman
PO Box 429
Ames, IA 50010

RE: MIRACLE PROJECT
INIS GROVE PARK, AMES

Dear John:

This letter is in response to the Miracle Project. Snyder & Associates prepared the site plan drawings for the project. HPC, L.L.C. lead the construction of the project and Snyder & Associates reviewed shop drawings and visited the site during construction. The project was constructed as per the plans and technical specifications for the project. Snyder & Associates recommends acceptance of this project.

Sincerely,

SNYDER & ASSOCIATES, INC.

A handwritten signature in blue ink that reads 'Donald P. Marner'.

Donald P. Marner, PLA

DPM/dmb

Enc.

WAIVER OF LIEN

To All It May Concern:


In consideration for one hundred percent payment in full, and other valuable consideration in hand paid, the receipt whereof is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all liens or claims, or right to lien or claim, for labor or materials, or both, furnished by **HPC, LLC** for the premises known and described as:

Ames Miracle Field & All-Inclusive Playground

Street and Number: **2500 Duff Avenue**
County: **Story**

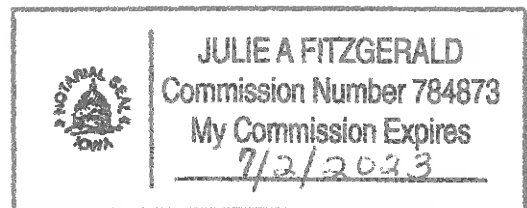
City: **Ames**
State: **Iowa**

I/We the undersigned warrant that I/we have already paid or will use the monies I/we receive from this payment to promptly pay in full all subcontractors and suppliers for all work, material, equipment or services provided for or to the above referenced project.

Trade General Contractor Firm's Name: HPC, LLC
By: 
Printed Name: Curtis Pike

Witnessed the hand and seal given this 3rd day of November, 2020
City of Ames State of Iowa

By: 



This lien is contingent upon final check clearing our bank.

Snapshot of The Ames Foundation Income and Expense for the Miracle League Field and Inclusive Playground Project as of October 31, 2020

In accordance with the July 31, 2018 agreement for construction of a Miracle League Field and Inclusive Playground, The Ames Foundation will provide a financial report at the completion of the project at the request of the City of Ames. A final report will be provided upon the completion of the projects associated with the Community Attraction and Tourism grant. A snapshot of income and expenses to date includes:

Expenses paid to date: \$2,195,888

Anticipated Additional Expenses: \$164,540

TOTAL Anticipated Expense: \$2,360,428

Total Income to Date: \$2,283,562

Additional Income Needed: \$76,866

TOTAL Anticipated Income: \$2,360,428

Income includes donations from the following sources:

8 Major Competitive Grants: over \$700,000

More than 70 Businesses/Organizations/Foundations: over \$750,000

Nearly 350 Individuals: over \$800,000

In-Kind Donations and cost-reductions were received from multiple contractors totaling more than \$100,000.

BILL OF SALE

In consideration of the fulfillment of the terms and conditions of the Miracle League Field and Inclusive Playground (“MLFIP”) Agreement between The Ames Foundation and the City of Ames, Iowa (“City”) agreed to on July 31, 2018, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Ames Foundation hereby conveys, transfers, and assigns to City the following described personal property, to wit:

- All of The Ames Foundation’s right, title, interest in and to the MLFIP, including any or all of the MLFIP’s structures and fixtures located on the City property known as Inis Grove Park.

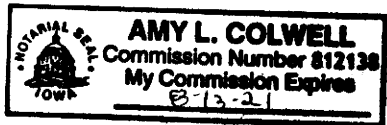
City hereby accepts this conveyance, transfer, and assignment and agrees to own the MLFIP in accordance with the terms of the above-mentioned MLFIP Agreement and all applicable governmental rules, laws, and regulations.

The Ames Foundation hereby covenants with the City that The Ames Foundation is the owner of said personal property, that The Ames Foundation has good and lawful authority to sell, transfer, and assign the same, and that the same is free and clear of all liens, security interests, and encumbrances. With this transfer of the MLFIP to the City, The Ames Foundation hereby quitclaims any ownership of or interest in the MLFIP, including any or all structures or fixtures of the MLFIP.

TRANSFER OF MIRACLE FIELD AND INCLUSIVE PLAYGROUND
BY THE AMES FOUNDATION

By: *Lynne Carey*
Lynne Carey, President

On this 5th day of November, 2020, before me, a Notary Public in and for said state personally appeared Lynne Carey, known to me to be the person(s) named in and who executed the foregoing instrument, and acknowledge that they executed the same as their voluntary act and deed.



Amy L. Colwell
Notary Public in the State of Iowa

My Commission expires 8-13-21

ACCEPTANCE OF MIRACLE FIELD AND INCLUSIVE PLAYGROUND
BY CITY OF AMES, IOWA

ATTEST:

By: _____
John A. Haila, Mayor

By: _____
Diane R. Voss, City Clerk

On this _____ day of _____, 2020, before me, a Notary Public in and for said state personally appeared John A. Haila, known to me to be the person(s) named in and who executed the foregoing instrument, and acknowledge that they executed the same as their voluntary act and deed.

Notary Public in the State of Iowa

My Commission expires _____