

COUNCIL ACTION FORM

SUBJECT: AGREEMENT WITH AMES COMMUNITY SCHOOL DISTRICT TO PURCHASE SIX PLAY STRUCTURES FOR ELEMENTARY SCHOOL SITES / EARLY CHILDHOOD CENTER

BACKGROUND:

During 2010 staff became aware that the Ames Community School District had a need to replace play equipment at each of its elementary schools, as well as the Early Childhood Center at Northwood. The District is currently facing difficult financial challenges and cannot fund the total cost to replace this equipment.

In September 2010, with the goal of assuring that elementary school sites continue to serve residents as “neighborhood parks”, the City Manager and Director of Parks and Recreation attended a School Board meeting. The City Manager proposed that the City and District partner in replacing this equipment. The City Manager stated his belief that the infusion of City funds for the purchase of playground equipment on School District property is warranted since citizens rely upon grade school sites to serve as “neighborhood parks,” and explained how an upgrade to these facilities would facilitate the City Council’s goal to strengthen our neighborhoods. City staff communicated to the School Board that the cost for an appropriately sized piece of equipment would be \$37,500 for each site, or \$225,000 total for up to six sites. At the School Board meeting, staff shared that – subject to City Council approval – the City would contribute \$135,000 and the District would need to contribute \$90,000. The School Board expressed support and appreciation of this proposal.

In January 2011, the Parks and Recreation Commission lent its support to this action during the Capital Improvement Planning (CIP) process to redirect \$135,000 in City funds (or \$22,500 per site for six sites) to assist the School District with purchasing new play equipment for up to six elementary schools / Early Childhood Center. In February, the City Council approved \$135,000 in the 2011/12 budget and CIP for this purpose.

As detailed in the attached agreement, each purchased piece will become the asset of the District, and the City will have no responsibility to maintain/replace the equipment or assume any liability for its use. However, the public will be allowed to use the equipment and each site will serve as a “neighborhood park”. The City’s contribution is for the purchase of play equipment only; not for safety surfacing, footings, installation, or other ancillary expenses.

It should be noted that, as the School District renovates and/or constructs new elementary schools in future years, these play structures will be installed in a manner that they can be relocated to another location.

The underlying vision for this City/School District partnership includes the following:

- 1) An upgrade to the District's elementary school playgrounds will facilitate the City Council's goal to strengthen our neighborhoods.
- 2) This partnership will enhance the relationships of parents at each elementary school and within the neighborhoods by allowing them to work together to fund-raise the District's share of the cost and by assisting with the installation of each piece.
- 3) After school hours, each elementary school will be promoted as a "neighborhood park".
- 4) Each elementary school will have a safe, fun, and age-appropriate play structure.

ALTERNATIVES:

1. Approve and enter into an agreement with the Ames Community School District to fund \$135,000 to replace up to six play structures at elementary school sites / Early Childhood Center with an appropriately sized piece of equipment costing \$37,500 each.
2. Do not enter into an agreement to partner with the Ames Community School District to fund the replacement of play structures at elementary school sites / Early Childhood Center.

MANAGER'S RECOMMENDED ACTION:

By partnering with the School District, this is a unique opportunity for the City to enhance elementary schools / Early Childhood Center, improve neighborhoods, and strengthen relationships amongst our residents as they fund raise and help install these play structures.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, thereby approving and entering into an agreement with the Ames Community School District to fund \$135,000 to replace up to six play structures at elementary school sites / Early Childhood Center with appropriately sized pieces of equipment costing \$37,500 each.

CHAPTER 28E
CITY OF AMES AND AMES COMMUNITY SCHOOL DISTRICT

THIS AGREEMENT is made and entered into this 13th day of September, 2011 by and between the City of Ames, Iowa, and the Ames Community School District. The parties agree as follows:

SECTION 1. PURPOSE. The parties have entered into this Agreement for the purpose of purchasing play equipment for up to six elementary school sites/early childhood centers, for the benefit of Ames school children and to also be used by the public as neighborhood parks when school is not in session. Each site will receive equipment totaling approximately \$37,500 in value.

SECTION 2. TERM. The term of the Agreement shall be from September 13, 2011 until September 30, 2014.

SECTION 3. FILING. Pursuant to Iowa Code § 28E.8, the City Clerk shall file the Agreement with the Iowa Secretary of State.

SECTION 4. RESPONSIBILITIES OF THE PARTIES.

4.1 Responsibilities of the City

The City agrees to provide partial funding for the purpose of purchasing commercial grade playground equipment for up to six elementary school sites/early childhood centers.

4.2 Responsibilities of the School District

The School District agrees to be responsible for selecting, purchasing, installing, and maintaining the playground equipment. The play equipment shall become the asset of the School District. The School District will assume all responsibilities in maintaining, operating, and replacing the equipment. The School District will assume any and all liability related to its existence. This liability will continue beyond the term of this agreement and for the lifetime of the equipment.

SECTION 5. COST.

The City will fund \$22,500 per site by September 30, 2014 for a total amount not to exceed \$135,000. The School District will fund at least \$15,000 per school site over the same period of time. The City's contribution is for the purchase of playground equipment only. In addition to the \$15,000 contribution for the purchase of playground equipment at each site, the School District will provide for the safety surfacing, footings, installation, and/or other ancillary expenses.

The School District must submit documentation including specific site location, equipment manufacturer, and a copy of the paid invoice from the supplier which includes itemized costs before the City will provide its share of the funding.

All funding spent pursuant to this Agreement shall be spent by September 30, 2014.

SECTION 6. ADMINISTRATION OF THE AGREEMENT. The City of Ames and the School District shall jointly administer the agreement.

SECTION 7. NO SEPARATE ADMINISTRATIVE ENTITY. No new or separate legal or administrative entity is created by this Agreement.

SECTION 8. TERMINATION. Following thirty (30) days written notice, either party may terminate the Agreement, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation to the non-terminating party. Following termination for convenience, the non-terminating party shall be entitled to compensation, upon the submission of invoices and proper proof of claim, for equipment purchased under the Agreement to the terminating party up to and including the date of termination.

SECTION 9. INDEMNIFICATION. The School District does hereby covenant and agree to indemnify and hold harmless the City, its officers and employees, against any loss or liability whatsoever, including reasonable attorney's fees, pertaining to any and all claims by any and all persons, resulting from or arising out of the School District's construction, location, operation and maintenance of said playground equipment. This liability will continue beyond the term of this agreement and for the lifetime of the equipment.

SECTION 10. CONTACT PERSON. At the time of execution of the Agreement, each party shall designate, in writing, a Contact Person to serve until the expiration of the Agreement or the designation of a substitute Contact Person. During the term of the Agreement, each Contact Person shall be available to meet, as otherwise mutually agreed, to plan the services being provided under the Agreement.

SECTION 11. CONTRACT ADMINISTRATION.

11.1 Amendments

The Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to the Agreement must be fully executed by the parties.

11.2 Third Party Beneficiaries

There are no third party beneficiaries to the Agreement. The Agreement is intended only to benefit the City and the School District.

11.3 Choice of Law and Forum

The terms and provisions of the Agreement shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with the Agreement shall be brought in Story County District Court.

11.4 Assignment and Delegation

The Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party.

11.5 Integration

The Agreement represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in the Agreement.

11.6 Not a Joint Venture

Nothing in the Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, association of any kind or agent and principal relationship between the parties. Each party shall be deemed an independent contractor acting toward the expected mutual benefits. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon the other party to the Agreement.

SECTION 12. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the Agreement and have caused their duly authorized representatives to execute the Agreement.

BY CITY OF AMES

By: _____	_____
Mayor	Date

Attest: _____	_____
City Clerk	Date

BY AMES COMMUNITY SCHOOL DISTRICT

_____	_____
Name	Date

_____	_____
Name	Date