

COUNCIL ACTION FORM

SUBJECT: AN AGREEMENT WITH THE AMES COMMUNITY PRESCHOOL CENTER TO PURCHASE PLAY EQUIPMENT

BACKGROUND:

In 2013, the Ames Community Preschool Center (ACPC) purchased the former Willson-Beardshear school. Prior to the purchase of the former school, ACPC contacted City staff inquiring about the City assisting in funding a playground structure for this site. In exchange for the funding, it was agreed that the play equipment and passive/active recreational space (Attachment A of the agreement) would serve as a neighborhood park when ACPC is not in session.

Staff presented the concept to the City Council during the last Budget Hearings in February 2013. Given the lack of funding from ACPC, Staff suggested that \$30,000 could be added to the CIP to up-front the purchase of the play equipment for ACPC. The City Council approved setting aside the funding and requested staff to develop an agreement in which ACPC would pay one-third of the cost.

In a letter dated August 23, 2013, ACPC asked the City Council to reconsider this funding arrangement based on unforeseen costs associated with their building project. ACPC requested \$32,720 in funding for the purchase of play equipment, installation and surfacing. Council referred this request to staff.

In its report, Staff stated that if Council was to approve funding to include installation, the City would need to do the bidding due to public improvement laws. In lieu of this information, and to the agreement of ACPC, Council, at the September 10, 2013 meeting, approved funding up to \$21,799 for the purchase of playground equipment only with ACPC reimbursing the City one-third of the cost the equipment by June 30, 2015. The agreement, as attached, reflects this funding level. ACPC will be responsible for installation of the equipment and providing a safe surface on which it will sit.

This arrangement is very similar to the one with the Ames Community School District whereby the City assisted in funding play equipment for the elementary schools. Elementary school sites have longed served as neighborhood gathering places and since ACPC's property is a former school site, this is no different.

ACPC intends to purchase play equipment (Attachment B of the agreement) suitable for ages two (2) to twelve (12). The cost for this piece is \$21,799 including tax if ordered by September 30, 2013.

As detailed in the attached agreement, because the purchased piece will become the asset of the ACPC, the City will have no responsibility to maintain, replace, or assume any liability for its use. However, the public will be allowed to use the equipment and the site will serve as a "neighborhood park".

The underlying vision for this City-ACPC partnership includes:

1. An upgrade to ACPC facilities would facilitate the City Council's goal to strengthen our neighborhoods.
2. This site will have a safe, fun, and age appropriate play structure.
3. When ACPC is not in session, the playground equipment and passive/active recreational area will be promoted as a "neighborhood park".

ALTERNATIVE:

1. Approve the attached agreement with the Ames Community Preschool Center to fund up to \$21,799 to purchase playground equipment at their site in exchange for use by the public of the equipment and surrounding passive recreational area. In accordance with the agreement, the City will be reimbursed one-third of the cost by June 2015.
2. Do not enter into an agreement to partner with the Ames Community Preschool Center to fund the purchase of playground equipment at their site.

MANAGER'S RECOMMENDED ACTION:

As noted above, an upgrade to ACPC's facility would facilitate the City Council's goal to strengthen our neighborhoods, and after school hours, this site will be promoted as a "neighborhood park". Therefore, it is the recommendation of the City Manager that the City Council approve Alternative 1.

THE CITY OF AMES AND THE AMES COMMUNITY PRESCHOOL CENTER PLAYGROUND AGREEMENT

THIS AGREEMENT is made and entered into this 25th day of September, 2013 by and between the City of Ames, Iowa, hereafter referred to as the City, and the Ames Community Preschool Center, hereafter referred to as the ACPC. The parties agree as follows:

SECTION 1. PURPOSE. The parties have entered into this Agreement for the purpose of making available a portion of the ACPC property (formerly known as Willson Beardshear School) located at 920 Carroll Avenue, Ames, Iowa to the general public as a neighborhood park when it is not in use by Ames Community Preschool Center. Attachment A identifies the area that will be accessible for public use.

SECTION 2. TERM. The term of the Agreement shall commence on September 25, 2013 and remain in effect until such time that the parties mutually agree to terminate the agreement under Section 7 of this agreement.

SECTION 3. RESPONSIBILITIES OF THE PARTIES.

3.1 Responsibilities of the City of Ames

The City agrees to provide funding identified in Section 4 for the initial purchase of commercial grade playground equipment for the former Willson Beardshear elementary school site at 920 Carroll Avenue, Ames, IA.

The City shall review and approve equipment that is targeted for youth two (2) to twelve (12) years of age to be purchased by Ames Community Preschool Center.

3.2 Responsibilities of Ames Community Preschool Center

The Ames Community Preschool Center agrees to be responsible for selecting, installing, and maintaining the playground equipment that meets Consumer Products Safety Commission (CPSC) guidelines, is compliant with the ADA, and has an initial life or durability of at least twenty (20) years. The recommended equipment will need to be submitted to the City for review and approval prior to purchase.

The playground equipment shall become the asset of ACPC upon purchase. Thereafter, the ACPC will assume all responsibilities for maintaining, operating, and replacing the equipment. ACPC 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, under Section 8 of this agreement.

In return for accepting the funding for the purchase of the playground equipment from the City, ACPC will provide access to the property for the use by the general public; including the playground equipment and passive/active recreational space identified in Attachment A as a neighborhood park from 6:00 PM to 10:30 PM on

weekdays, on all weekend days from 6:00 AM to 10:30 PM., and on all other hours of the day between 6:00 AM and 10:30 PM when the ACPC is not in operation.

The parties further agree that the site identified for public use on Attachment A shall be maintained by the ACPC to provide a safe environment that is free of debris and hazards. Surface materials used in the playground structure area shall meet ASTM requirements at all times as well as be ADA compliant. All areas provided to the public under this agreement shall be easily accessible to residents and provide the appearance that it is open to the public for use and compliant with ADA.

The purchase and installation of the playground equipment shall be completed by April 1, 2014.

SECTION 4. FUNDING. The City will advance up to \$21,799 for the purchase of the playground equipment. ACPC shall repay to the City a minimum of one third of the total cost for the above item no later than June 30, 2015. The City's contribution is for the purchase of commercial grade playground equipment only; not for safety surfacing, footings, installation, or other ancillary expenses that will be required to enter into this agreement.

ACPC must submit all documentation related to purchasing and installation of the playground and a copy of the invoice(s) from the supplier(s) of the playground equipment and other related safety materials for playground installation which includes itemized costs to ensure compliance with this agreement.

SECTION 5. ADMINISTRATION OF THE AGREEMENT. The City and the ACPC shall jointly administer the agreement.

SECTION 6. NO SEPARATE ADMINISTRATIVE ENTITY. No new or separate legal or administrative entity is created by this Agreement.

SECTION 7. TERMINATION. This agreement may be terminated only upon the mutual consent of both parties.

SECTION 8. INDEMNITY AND HOLD HARMLESS. The ACPC hereby agrees to indemnify, defend and hold harmless the City, its officers, agents and employees, against any and all claims, suits, actions, debts, damages, costs, charges, and expenses, including court costs and reasonable attorney's fees, and against any and all liability for property damage and personal injury, including death resulting directly or indirectly therefrom, arising from any act of negligence of ACPC, either active or passive, or those of its agents, employees, assigns, or any other persons acting on behalf in supervising use of the Facilities and accompanying property by ACPC employees, staff, personnel or invitees pursuant to the terms of, and for the purposes specified in, this Agreement, or arising from ACPC's supervision of any other use of the premises by ACPC, its agents, employees, assigns, invitees, or any other person acting on its behalf, or arising from the ACPC's supervision of any activity which ACPC sponsors, suffers or allows to occur on the property.

ACPC further covenants and agrees that it will, at its own expense, procure and maintain occurrence basis Commercial General Liability (CGL) insurance from a company or companies authorized to do business in the state of Iowa, in amounts not less than \$1,000,000 Combined Single Limit (Bodily Injury and Property Damage) per occurrence and \$2,000,000 Aggregate Limits per occurrence. Certificates of Insurance will be provided by ACPC indicating that City of Ames has been named as Additional Insured on the policy (ies) and further stating that City of Ames will be notified of changes or cancellation per the Terms of said policy (ies).

SECTION 9. 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 10. CONTRACT ADMINISTRATION.

10.1 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.

10.2 Third Party Beneficiaries

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

10.3 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.

10.4 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.

10.5 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.

10.6 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 11. 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

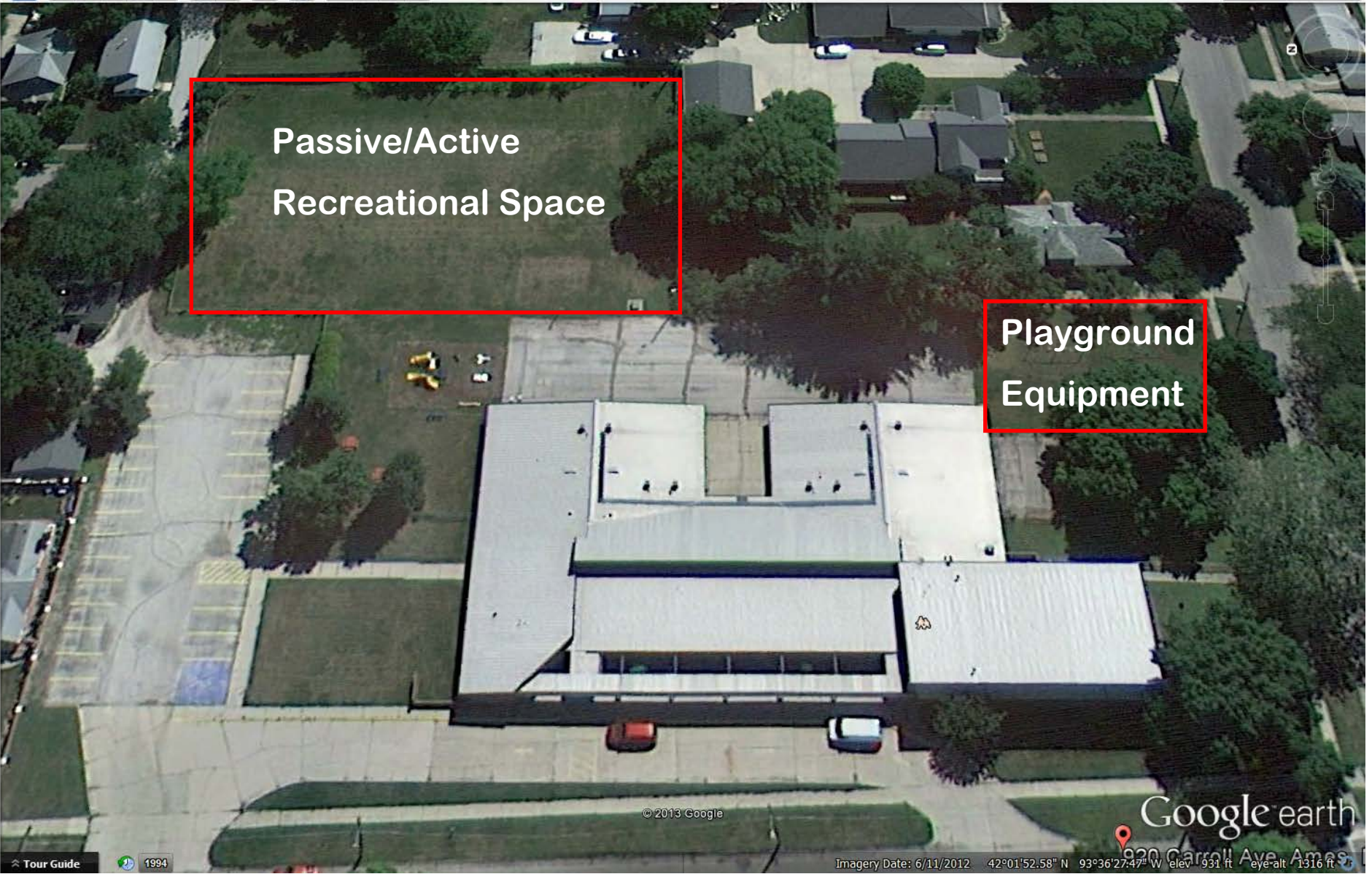
By: _____
Mayor Date

Attest: _____
City Clerk Date

BY AMES COMMUNITY PRESCHOOL CENTER

Name Date

Name Date



Passive/Active
Recreational Space

This is an aerial photograph of a school campus. A large, rectangular grassy area is outlined in red and labeled 'Passive/Active Recreational Space'. To the right of this area, a small playground with yellow equipment is outlined in red and labeled 'Playground Equipment'. The school building, a long, light-colored structure with a flat roof, is in the center. A parking lot with several cars is to the left of the building. The surrounding area includes trees and residential houses.

Playground
Equipment

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Google earth

920 Carroll Ave Ames, IA

Imagery Date: 6/11/2012 42°01'52.58" N 93°36'27.47" W elev 931 ft eye alt 1316 ft

Tour Guide

1994

SALE PRICE
\$20,998

