

**COUNCIL ACTION FORM**

**SUBJECT: AGREEMENT WITH THE AMES FOUNDATION FOR CONSTRUCTION OF THE MIRACLE LEAGUE FIELD AND INCLUSIVE PLAYGROUND AT INIS GROVE PARK**

**BACKGROUND:**

On October 25, 2016, the City Council directed staff to proceed with plans for the construction of a Miracle League Field and Inclusive Playground (MLFIP) at Inis Grove Park. This project involves a partnership among the City, The Ames Foundation, and the MLFIP Steering Committee. The Ames Foundation has agreed to serve as the fiscal agent for this project. An agreement has been prepared to describe the roles of The Ames Foundation and the City for this project. The agreement has been approved by The Ames Foundation.

The proposed agreement outlines the following:

1. The Ames Foundation will collect and hold contributions for the project
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
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. No City funds will be used in the construction of the project.
4. The Ames Foundation will ensure the construction is completed in accordance with the design and applicable codes and in a manner that will be acceptable to the City upon completion
5. The City is entitled to make a final inspection and obtain a final financial report upon the completion of the project
6. 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.

This agreement provides a roadmap for the MLFIP project to proceed. Once enough funds are raised to complete the project, this agreement will allow for construction to proceed. It is anticipated that fundraising will be complete in time for construction during the summer of 2019.

**ALTERNATIVES:**

1. Approve the attached agreement with The Ames Foundation to provide for the construction of the Miracle League Field and Inclusive Playground project at Inis Grove Park
2. Direct staff to modify the agreement
3. Do not approve the agreement

**CITY MANAGER’S RECOMMENDED ACTION:**

The Miracle League Field and Inclusive Playground project is an opportunity to provide a significant improvement to the Ames parks system. It will provide a recreational amenity for residents of all abilities to enjoy. The project involves a number of dedicated individuals and organizations contributing their efforts. This agreement provides a framework for The Ames Foundation to receive funds and manage the construction of the project on City land. The Parks and Recreation staff will be involved throughout the construction to ensure the project is being constructed to the standards agreed upon in the design.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the attached agreement with The Ames Foundation to provide for the construction of the Miracle League Field and Inclusive Playground project at Inis Grove Park.

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: \_\_\_\_\_