

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Parks and Recreation

AGENDA DATE: December 11, 2018

CONTACT PERSON/PHONE: Tracy Novak, Parks and Recreation Director (212-1708)

DISTRICT(S) AFFECTED: District 8

STRATEGIC GOAL:

Goal 4 – Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments

SUBJECT:

Discussion and action on a Resolution that City Manager be authorized to sign a Donation Agreement with Coronado Hills Neighborhood Association for the donation of playground equipment, shade canopy and other park amenity improvements for the Jan Sumrall Memorial Trailhead; and that City Council authorize up to \$180,000 for installation of the improvements by the City.

BACKGROUND / DISCUSSION:

The Coronado Neighborhood Association (CAN) has collected sufficient donations to pay for play equipment, exercise stations, and a metal shade canopy for improvements to Jan Sumrall Memorial Trailhead.

Community input received during the planning for the Trailhead over multiple public meetings resulted in a desirable location for a play area. There is no playground within 1 mile of this location, and placement meets the criteria within the Parks and Recreation Master Plan and park standards.

There are sufficient funds within 2012 Quality of Life Bond Funds to install the improvements, and complete the All Abilities Playground Plan as envisioned.

CHNA requests the City fund the installation of the improvements when available funds are determined.

PRIOR COUNCIL ACTION:

On 5/29/18, City Council took action to name Jan Sumrall Memorial Trailhead.

On 9/18/18, City Council approved the All Abilities Playground Plan.

AMOUNT AND SOURCE OF FUNDING:

2012 Quality of Life Bond Funds - \$180,000 – 190-29010-580270-4800-PCP13PARKA15

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City of El Paso accepts, with gratitude, the donation from the Coronado Hills Neighborhood Association ("CHNA"), of the following:

Purchase of playground equipment, metal shade canopy, exercises equipment and other park amenities to be placed at Jan Sumrall Memorial Trailhead to be used in the City's Parks and Recreational Facilities.

That City Council also authorizes the City Manager to sign a Donation Agreement to provide for the purchase of the improvements, as well as any necessary documentation and agreements required for this donation; and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers.

APPROVED this _____ day of _____, 2018.

CITY OF EL PASO

ATTEST:

Dee Margo
Mayor

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Leslie B. Jean-Pierre
Assistant City Attorney

Tracy Novak, Director
Parks and Recreation Department

THE STATE OF TEXAS
COUNTY OF EL PASO

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DONATION AGREEMENT

This Donation Agreement ("Agreement"), made this the ___ day of _____, 2018, (hereinafter the "Effective Date") between the **CITY OF EL PASO**, a Texas home rule municipal corporation, hereinafter referred to as "City", and **CORONADO HILLS NEIGHBORHOOD ASSOCIATION**, a public charity under IRS designation 501(c)(3) (hereinafter "CHNA").

WHEREAS, the City seeks to promote healthy outdoor recreational activity to the citizens and visitors of El Paso through the use of its City Parks; and

WHEREAS, the CHNA wishes to donate playground equipment, exercise equipment, metal shade canopy and other related park amenities to be used at the Jan Sumrall Memorial Trailhead, as described below under CHNA's and City's Responsibilities.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, CHNA AND CITY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

1. Contractual Relationship:

1.1 The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.

1.2 As an independent contractor, CHNA understands and agrees that it will be responsible for its respective acts or omissions, and the City shall in no way be responsible as an employer to CHNA's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.3 As an independent contractor, the City understands and agrees that it will be responsible for its respective acts or omissions, and CHNA shall in no way be responsible as an employer to the City's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.4 CHNA acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. The City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind CHNA to any obligations other than the obligations set forth in this Agreement. CHNA agrees that its personnel shall participate in the donation of park amenities in compliance with all applicable federal, state, and/or local rules and regulations.

2. CHNA's Responsibilities:

- 2.1 Order playground equipment, exercise equipment, metal shade canopies and other related park amenities from Exerplay, Inc. All donated park equipment, park amenities, warranties and related documentation will become the property of the City upon transference from CHNA and Exerplay, Inc.
- 2.2 Serve as Point of Contact with Everplay, Inc., for delivery of equipment
- 2.3 CHNA will provide input into the final design and layout of the equipment for the project site.

3. City's Responsibilities:

- 3.1 City will provide space at Jan Sumrall Memorial Trailhead for placement of the park equipment and amenities.
- 3.2 City will be responsible for installation of all amenities, through its workforce or by third party contractor.
- 3.3 Issue all necessary permitting & approvals
- 3.4 Provide Point of Contact for all communications to CHNA.
- 3.5 City will be responsible for all maintenance and repairs to the improvements.

4. Amendment of Agreement: No amendment to this Agreement shall be effective unless reduced to writing, executed by the authorized representatives of the City and CHNA. The City Manager for the City of El Paso or a designee is authorized to enter into amendments to this Agreement that do not affect the City Budget.

5. Notices: All notices under this Agreement shall be in writing and delivered either by personal delivery or by United States certified mail, return receipt requested. Such notices shall be deemed given when received by such party's designated representative.

DONOR: Coronado Hills Neighborhood Association
Attn: Stefanie Block
1057 Thunderbrid Drive
El Paso, TX 79912-3410

CITY: City of El Paso
Attn.: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

COPY TO: City of El Paso
Attn.: Parks and Recreation Director
P.O. Box 1890
El Paso, Texas 79950-1890

6. Assignment. This Agreement is not assignable in whole or in part by any party hereto without prior written consent of the other party.

7. Force Majeure. This agreement may be terminated by either party due to acts of God, war, government regulations, disaster, strikes (save and except strikes involving employees of the party seeking the protections of this provision), civil disorder, curtailment of transportation facilities, or other emergencies making it illegal or impossible to perform obligations under this agreement. In order to terminate this agreement under this provision for any one or more of such reasons, the terminating party must provide written notice to the other party within five (5) days of the occurrence of any of these events. In the event that services are suspended for a time period not to exceed thirty (30) days because of an act of nature, act of God or other force majeure event, beyond the reasonable control of a party, either party may terminate this Agreement immediately without cause or penalty and any monies paid for such services in advance shall be refunded immediately.

8. Term and Effective Date: This Agreement shall be effective for _____ from the date and year first entered above ("Term").

9. Termination

9.1 Termination - Cause. The parties agree that either party may terminate this Agreement in whole or in part. Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of thirty (30) calendar days to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

9.2 Termination - Convenience. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

9.3 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the other party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

9.4 Except as otherwise provided herein, all duties and obligations of the City and CHNA shall cease upon termination or expiration of this Agreement.

10. Insurance and Indemnification

10.1 As a condition of this Agreement, CHNA or its insurer shall **INDEMNIFY, DEFEND AND HOLD** the City, its officers, agents and employees, **HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE,) INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE**

AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City shall promptly forward to CHNA every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. CHNA shall 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as CHNA may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. CHNA shall pay all judgments in actions defended by CHNA pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss of or damage to CHNA's property from any cause.

11. Consideration. CHNA agrees to perform the services for no monetary compensation and that the opportunity to provide the donation constitutes full and complete consideration.

12. Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the City enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the State of Texas, along with applicable provisions of the federal law, the El Paso City Code, and any Ordinance of the City.

14. Entire Agreement. This agreement contains the entire understanding between the parties and supersedes any and all prior agreements, arrangements, communications, or representations, whether oral or written concerning the same subject matter. This Agreement may not be amended, altered, modified or changed except in writing, signed by both parties.

15. Severability. In the event any one or more of the provisions of the Agreement shall be held by a tribunal of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision. If any provision of this Agreement is held to be excessively broad as to duration, geographical scope, activity or subject, it is to be construed by limiting and reducing it, so as to be enforceable to the extent compatible with applicable law.

16. Headings. The headings of sections and subsections of this Agreement are for reference only and shall not alter the terms and conditions of this Agreement.


17. Authorization to Enter into Agreement. The Parties warrant and represent that they have full authority to enter into this Agreement and to consummate the transactions contemplated hereby and that this Agreement is not in conflict with any other agreement to which the Parties are a party or by which they may be bound.

(SIGNATURES ON FOLLOWING PAGE)

CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Tracy Novak, Director
Parks and Recreation Department

DONOR: Coronado Hills Neighborhood
Association

Stefanie Block
1087 Thunderbird Drvie
El Paso, Texas 79912-3410