

**CITY OF BOULDER
PARKS AND RECREATION ADVISORY BOARD AGENDA ITEM**

MEETING DATE: February 24, 2014

AGENDA TITLE: Public Hearing and consideration of a motion approving the three year Holiday Neighborhood Maintenance Agreement.

PRESENTERS:

Jeff Dillon, Director, Parks and Recreation
Alice Guthrie, Recreation Superintendent
Abbie Poniatowski, Senior Business Manager
Jeff Haley, Parks Planning Manager

EXECUTIVE SUMMARY:

The purpose of the item is for the Parks and Recreation Advisory Board (PRAB) to review and approve the “CONSTRUCTION AND MAINTENANCE LICENSE AGREEMENT” for Holiday Neighborhood Park.

The Holiday Neighborhood Association and the Parks and Recreation Department entered into a partnership to improve and establish a park area located at 4650 14th Street in 2006. The park is now developed and has been operated and managed by a construction and maintenance license agreement since 2009 and the park is being used for the mutual benefit of the citizens of Boulder and the Neighbors of the Holiday Park Neighborhood and has been formally named Holiday Neighborhood Park. The ‘Construction and Maintenance License Agreement’ for Holiday Neighborhood Park defines the maintenance relationship between Holiday Neighborhood Association and parks maintenance staff.

STAFF RECOMMENDATION:

Staff recommends that the PRAB make a motion approving the attached ‘Construction and Maintenance License Agreement’ for Holiday Neighborhood Park and authorizing the City Manager to make minor amendments prior to or during the term of this agreement in order to ensure that the park is properly used, maintained, and repaired in a manner that is consistent with applicable laws and the policies and regulations of the City of Boulder.

Suggested Motion Language:

Staff requests PRAB consideration of this matter and action in the form of the following motion:

Motion to approve the ‘Construction and Maintenance License Agreement’ for Holiday Neighborhood Park and authorizing the City Manager to make minor amendments prior to or during the term of this agreement in order to ensure that the park is properly used, maintained, and repaired in a manner that is consistent with applicable laws and the policies and regulations of the City of Boulder.

CITY COUNCIL, BOARD AND COMMISSION FEEDBACK:

In 2009, PRAB reviewed and approved the previous Construction and Maintenance Agreement for Holiday Neighborhood Park.

COUNCIL FILTER IMPACTS

Economic: By entering into the agreement, the department is partnering with the Holiday Neighborhood Association in funding the ongoing operations and maintenance activities of the park which is estimated at \$2,529 annually or \$7,587 over the three year term of the agreement.

Environmental: Through partnership with the Holiday Neighborhood Association, staff travel time to and from the site is greatly reduced and allows the department to meet climate action goals of reducing daily vehicle trips to park sites and reduction of net greenhouse gas emissions.

Social: The agreement with the Holiday Neighborhood Association allows the community to have a vested ownership and sense of stewardship of the neighborhood park. This agreement allows the department to continue to meet several key themes and the guiding principles of the recently accepted master plan for the department relative to partnership, community engagement and financial sustainability.

OTHER IMPACTS:

Fiscal: The Holiday Neighborhood Association (HNA) has agreed to extend the term of the Agreement for another three years, through 2017. It is estimated that the maintenance performed by the HNA saved the city \$2,000 annually, the majority of the estimated \$2,529 required to maintain one park acre (Holiday is 1.1 acres) in an average year.

Staff time: The execution of this agreement saves many hours of staff time annually in the form of reducing the operations and maintenance of the park areas including travel time to and from the park, maintenance tasks on site and response to critical issues that may arise.

PUBLIC FEEDBACK:

The proposed ‘Construction and Maintenance License Agreement’ has been reviewed and approved by representatives of the HNA.

ANALYSIS:

The joint development and maintenance of the Holiday pocket park by the HNA and the City of Boulder benefits the HNA, the city and the public. Staff supports continuing to partner with the HNA in this project that dates back to 2006.

Staff from Parks and Recreation coordinated the development of the license agreement through the City Attorney's Office. It was modeled on the previous agreement that was approved by PRAB and served for 2009 through 2012. Staff anticipates that future construction and maintenance agreements would take a similar form, but will be adapted to reflect lessons learned and the specifics of each situation. Since 2009 few modifications have been made with the exception of more specific language relative irrigation infrastructure and maintenance. Additionally, the department anticipates the development of a new shade canopy within the playground area to accommodate the critical need for shade at this popular and highly visited neighborhood park. Due to the lack of mature shade trees, this park is highest on the list for new shade amenities at the playground. The department anticipates using approved Capital Improvement Bond funds for the construction of the shade canopy as enhancements and additions of park shade shelter amenities was one of four projects approved through the Capital Bond funding. This proposed development is specifically illustrated in the agreement

ATTACHMENTS:

- A. 'Construction and Maintenance License Agreement' for Holiday Neighborhood Park'

**CONSTRUCTION AND MAINTENANCE LICENSE AGREEMENT
HOLIDAY NEIGHBORHOOD PARK**

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT (“Agreement”) is between the Holiday Neighborhood Association, a Colorado non-profit corporation (“Neighborhood Association”), and the CITY OF BOULDER, a Colorado home rule municipality, P.O. Box 791, Boulder, Colorado 80306 (“City”), and is entered into effective as of _____, 2014.

BACKGROUND

A. The Neighborhood Association and the City improved and established a park area, which included the installation of turf, landscaping and playground and recreational facilities on City property located at 4650 14th Street, more particularly described in Exhibit A (“Park”).

B. It is recognized by the parties that the joint development and use of portions of City property by the Neighborhood Association and the City for recreational purposes benefits the Neighborhood Association, the City, and the public.

C. The City is authorized by law to organize, promote, and conduct community recreation programs; to establish park areas, playgrounds, and recreational facilities; and to acquire, improve, maintain, and operate such park areas, playgrounds, and recreational facilities.

D. The Neighborhood Association and the City desire to enter into this Agreement for the continued improvement, development and common use and maintenance of the Park area and related facilities at the Park.

E. The term of this Agreement shall be three years and subject to final approval by the Parks and Recreation Advisory Board as required by Charter Section 164 and Section 8-3-23, B.R.C. 1981.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing background recitals and the mutual promises of the parties set forth in this Agreement, the parties agree as follows:

1. Purpose. The Neighborhood Association and the City enter into this Agreement to provide for the improvement, development, use, and maintenance of the Park. The Parties agree that the Neighborhood Association may contract with third parties to complete some or all of the obligations set forth in this Agreement. Whenever this Agreement refers to the “Neighborhood Association” such term also includes third party designees that may be hired by the Neighborhood Association. The Neighborhood Association assumes all of the obligation that are apportioned to it under this Agreement.

2. Grant of License. The parties agree that this Agreement is for a license. It is a grant of permission for the Neighborhood Association to do those items outlined in this Agreement. It shall not be construed to convey any interest in the Park. The City grants to the Neighborhood Association, its employees, authorized agents and contractors, permission to enter onto the Park for the purposes set forth in this Agreement, which include without limitation, provisions for the following: maintenance of the turf, plant beds, and trees; snow removal on parkland sidewalks; planting of trees, installation of plant beds and installation of recreational equipment (the "Improvements"). The license to enter granted pursuant to this Agreement shall be for a period of three (3) years from the date stated above, unless sooner terminated by the City as provided herein.

4. Use of Park. The parties agree that the use of the Park shall be open to the public in a manner that is similar to other City parks and the Neighborhood Association shall not have the right to exclude any member of the public from using the Park.

5. Improvements and Ownership.

5.1 City Property. Unless otherwise set forth in this Agreement, all improvements presently in place or to be constructed in the future on the Park shall remain with the land on which the improvements are located and shall be considered the property of the City.

5.2 Improvements. Subject to the provisions of this Agreement, the City agrees that the Neighborhood Association shall be authorized to make the alterations, renovations, and additional improvements at the Park. Such Improvements shall be: (a) completed in conformity with specifications and construction documents developed by the Neighborhood Association in cooperation with and subject to the approval of the City; (b) performed by persons or entities selected by the Neighborhood Association in accordance with City standard construction practices; (c) completed under the supervision of the Neighborhood Association in cooperation with the City's project manager; and (d) shall be paid for with funds raised by and donated to the Neighborhood Association.

5.2.1. The City intends to purchase and install a permanent shade structure within the park adjacent to the existing playground amenities. All equipment shall meet city Parks and Recreation standards. The final design, specifications, and construction contractors shall be subject to final review and approval by the City and Neighborhood Association. The work will be complete by April 2015. If such work is not completed during the term of this agreement, then such work will be subject to the terms of a subsequent agreement between the parties. Nothing contained in this paragraph shall be interpreted to limit the City's authority to install any equipment during the term of this agreement.

6. Maintenance and Utility Costs. The Neighborhood Association shall have responsibility for the repair, maintenance, and reasonably safe operation of the Park in accordance with the guidelines set forth below:

6.1 Turf Care

- 6.1.1 Care of the irrigated City Park turf will be the responsibility of the neighborhood association and will be mowed and string trimmed one time per week during the optimal growing season, or more often if necessary to maintain the turf to approximately three (3) inches in height.
- 6.1.2 Turf will be aerated a minimum of twice each year. Turf in City rights-of-way will not be aerated due to the potential for damage to sub-surface irrigation system components. The neighborhood association will coordinate this work with city irrigation staff to minimize potential irrigation damage.
- 6.1.3 Turf will be fertilized twice per year, preferably in the spring and fall seasons.
- 6.1.4 Maintenance to repair or replace turf in worn areas will be done on an as-needed basis. Holes in turf, including low spots around irrigation system components, damage due to heavy use, vandalism, or any other cause will be filled within 24 hours of notification to Neighborhood Association, or observation when performing routine site inspections, or within such other time frame as the city, in its discretion, may approve.
- 6.1.5 Weeds on turf will be treated by mechanical or other methods that are consistent with the City's Integrated Pest Management Guidelines ("IPM Guidelines"). The Neighborhood Association will coordinate with City staff to ensure guidelines are followed.
- 6.1.6 Turf will be treated for diseases as needed to prevent the spread of disease to other healthy turf areas, consistent with applicable City IPM Guidelines.
- 6.1.7 The Neighborhood Association will conduct a weekly inspection of Park turf areas to identify issues or concerns as noted in Paragraph 6.1 of this Agreement, and will take appropriate action to achieve stated goals and ensure safe conditions.

6.2 Irrigation.

- 6.2.1 Irrigation system operation and maintenance on parkland will be the responsibility of City staff. The City irrigation system will be operated and maintained to provide for optimum water delivery.

6.2.2 Irrigation systems will be manually run when possible during the growing season. All preventive maintenance including that associated with valves, heads, wiring, etc. will be completed during the manual run through of the system.

6.2.3 All other irrigation maintenance issues will be mitigated within 48 hours of notification.

6.3 Trash Removal. The City will install one wildlife resistant receptacle and one post mounted pet pick up station at the site. The City will be responsible for trash removal for said receptacles on a routine basis.

6.4 Horticulture. All ornamental plantings including annual/ perennial plants, shrubs, groundcovers etc. located on the Park will receive water through the irrigation system that was constructed and maintained by the City.

6.4.1 Planting beds. The Neighborhood Association will accomplish mechanical weed control on a weekly basis, and will inspect plants for insect, disease or other problems at that time. Problems observed during the growing season will be controlled through appropriate cultural practices that are consistent with the City's Integrated Pest Management Guidelines ("IPM Guidelines"). The Neighborhood Association will coordinate with City staff to ensure guidelines are followed. If necessary, replacement of plants will be the responsibility of the Neighborhood Association and to coordinate with City staff. The Neighborhood Association will ensure that wood chip mulch approximately 2" deep is in place on the soil surrounding all plants by adding material a minimum of two times per year.

6.4.2 Trees. The Neighborhood Association will ensure that wood chip mulch approximately 3-4" deep is in place on the soil surrounding all trees by adding material a minimum of two times per year. Mulch around trees will all be applied to create a 3' diameter ring. In coordination with city forestry staff and in accordance with applicable state, federal or local law, the Neighborhood Association will be responsible to replace any tree on City parkland that is severely damaged or destroyed through any of its maintenance operations on site. Irrigation, pest control, and pruning will be the responsibility of City staff.

6.5 Snow Removal. Neighborhood Association will perform snow removal on all City parkland sidewalks. All sidewalks and ramps will be plowed and/ or shoveled as needed to comply with the City ordinance, which states that all snow will be removed within 24 hours of every snowfall occurrence throughout the year. Re-checking the sidewalks and performing additional snow removal/ ice control activities after the initial snowfall will continue for as many days as necessary to ensure safe conditions exist on all walks and ramps, and ice-

melting products will be used as needed in conjunction with these efforts. Detailed records of all snow removal activities will be kept by the Neighborhood Association, and will be made available to City staff for reference upon request.

6.6 Inspection. Permanent structures within the Park will be jointly inspected a minimum of twice each year and repaired as necessary and feasible by the Neighborhood Association. Equipment replacement or capital improvements shall be subject to City approval. The City will be responsible for maintenance of all of the irrigation equipment.

6.7 Clean Up. The Neighborhood Association shall perform or cause to be performed an overall clean-up of the Park during the first week in November (weather permitting) and secure the Park for the winter.

6.8 Graffiti Removal. The Neighborhood Association will remove or eradicate graffiti in the Park, consistent with the obligations of a commercial property owner in Section 5-4-14, "Graffiti Prohibited" B.R.C. 1981.

6.9 Annual Review. In addition to the Improvements, the parties agree to meet annually to discuss a capital improvement plan that would address the long-term needs of the Park.

6.10 Right to Repair/Condition upon Termination. The City retains the right to make capital improvements or repair capital improvements, as it believes to be necessary, in order to ensure that the Park is in good condition; provided, however, any such repairs and improvements, unless otherwise agreed to in advance by the Neighborhood Association, shall be at the City's sole expense. Upon termination of this Agreement, the Neighborhood Association will leave the permanent improvements in their current condition, ordinary wear and tear excepted. In accordance with the provisions of Section 8, the City may declare the Neighborhood Association in breach of its obligation to maintain the Park in the condition provided herein if the Neighborhood Association has, in the City's discretion determined that it has neglected such obligations.

7. Liability

7.1 Immunity. Subject to the provisions of the Colorado Governmental Immunity Act, each party assumes liability for injury to person and damage to property arising out of its occupancy and use of the Park. Nothing contained in this Agreement shall constitute any waiver by the City of the provisions of the Colorado Governmental Immunity Act or any other immunity or defense provided by statute or common law.

7.2 Supervision. The parties agree that neither assumes any responsibility hereunder for providing supervision for participants, employees, or volunteers of any activities under the control of, sponsored by, or conducted by the other party on the Park. During the period that any portion of the Park is being used by the Neighborhood Association or the City in a sponsored activity or program, the using entity in each instance shall be responsible for all necessary supervisory or instructional personnel required for such programs.

7.3 Insurance. The Neighborhood Association, at its sole cost and expense, shall, during the term of this Agreement, procure, pay for and keep in full force and effect a policy of commercial general liability insurance covering the improvements and the Park insuring the Neighborhood Association in the amount not less than One Million Dollars (\$1,000,000.00) combined single limit, Two Million Dollar (\$2,000,000.00) aggregate covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Park (including acts or omissions of the Neighborhood Association).

All policies of insurance carried by the Neighborhood Association shall name the City as an additional insured. A certificate of such insurance shall be filed with the City prior to signature of this Agreement by the City. The policy or policies shall contain a provision that the policy or policies cannot be canceled or materially altered either by the insured or the insurance company until thirty days prior written notice thereof is given to the Neighborhood Association and the City. Upon issuance or renewal of any such insurance policy, the Neighborhood Association shall furnish a certificate of insurance showing evidence of coverage that names the City as additional insured. Any such policies shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any act or neglect of any assignees or sub licensees of the Neighborhood Association.

7.4 Indemnification. The Neighborhood Association covenants that it will indemnify, defend and hold the City harmless from all claims, demands, judgments, costs, and expenses, including attorney's fees, arising out of any accident or occurrence causing injury to any person or property whomsoever or whatsoever due directly or indirectly to Neighborhood Associations use or maintenance of the Park during the term of this Agreement, unless such accident or occurrence results from any tortuous misconduct or negligent act or omission on the part of the City, its agents and employees.

7.5 No Third Party Beneficiaries. The covenants and agreements contained in this Agreement are for the benefit of the Neighborhood Association and the City only, and do not create any obligations or duties to persons not parties hereto.

7.6 Recreational Exemption. It is the intention of the parties to make the Park available to the public for recreational purposes to limit the parties' liability toward persons entering thereon for such purposes to the extent permitted by Colo. Rev. Stat. §§ 33-41-101 *et seq.*, in the event that either or both of the parties would otherwise be liable.

7.7 Notice of Defects. Each party agrees to notify the other of any defects or potential defects, dangerous conditions or potential dangerous conditions, claims or potential claims from damage or injury that come to its attention in connection with its usage.

8. Termination. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time, without cause, by providing written notice of termination

to the Neighborhood Association. Such notice shall be delivered at least thirty days prior to the termination date contained in the notice unless otherwise agreed to in writing by the parties.

9. Miscellaneous.

9.1 Binding Effect. This Agreement shall be binding upon the parties and their successors in interest.

9.2 Notice. Any notice required by this Agreement shall be in writing, made by hand-delivery or certified mail, return receipt requested, and addressed to the following:

Holiday Neighborhood Association
C/O Aaron Brockett
1650 Zamia Avenue
Boulder, Colorado 80304

City Manager with copy to Director of Boulder Parks and Recreation
City of Boulder
Boulder Municipal Building
P.O. Box 791
Boulder, Colorado 80306

Notice given by hand-delivery shall be effective immediately and notice by mail shall be effective three days after it is deposited in the United States mail depository correctly addressed with sufficient postage for delivery.

9.3 Authority. The parties represent that the individuals signing this Agreement on their behalf possess full power and authority from their respective governing boards in compliance with Colorado law.

9.4 Waiver. No waiver of any right under this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.

9.5 No Assignment. No provision of this Agreement shall be assigned by either party without prior written consent of the non-assigning party.

9.6 Cooperation. Each party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

9.7 Severability. Each provision of this Agreement shall be severable. If any provision is held invalid, contrary to, or in conflict with any law or regulation by a tribunal with competent jurisdiction, the remainder of this Agreement shall remain in effect.

9.8 Annual Appropriation. The City's financial obligations under this Agreement in future fiscal years are subject to annual appropriation in accordance with Colorado law.

This Agreement shall be effective as of _____, 2014 upon the execution by both parties.

CITY OF BOULDER,
a Colorado home rule municipality

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

HOLIDAY NEIGHBORHOOD ASSOCIATION,
a Colorado non-profit corporation

By: _____

ATTEST:

Secretary

EXHIBIT A

LEGAL DESCRIPTION

Outlot C of the Holiday Neighborhood Subdivision, City of Boulder, County of Boulder, State of Colorado, recorded at 3:57 P.M. on the 26th Day of March A.D. 2003 (Reception #2416619) with the Boulder County Clerk and Recorder.