

From: William Clague

Sent: Tuesday, July 25, 2017 9:36 AM

To: Danny Hopkins <Danny.Hopkins@mymanatee.org>

Cc: Mitchell Palmer <mitchell.palmer@mymanatee.org>; Alex Nicodemi <alex.nicodemi@mymanatee.org>; Charlie Hunsicker <charlie.hunsicker@mymanatee.org>; Cynthia Gray <cynthia.gray@mymanatee.org>; Debbie Voorhees <debbie.voorhees@mymanatee.org>; Juliet Shepard <juliet.shepard@mymanatee.org>

Subject: Public Private Partnership with Manatee County Rotary Club (Playgrounds); RLS-2017-0177

Danny:

Pursuant to the above Request for Legal Services, you have asked for the assistance of this office to prepare an agreement with Rotary's Suncoast Playground Project, Inc. (Rotary) to provide for installation of playground equipment at County parks that complies with the American's With Disabilities Act. I provide the following advice in response:

1. Shortly after receiving this RLS we met to discuss the possible structure of a relationship with Rotary. Per our advice, you then met separately with representatives of Rotary, and provided us with a proposed term sheet by email on June 20, 2017.
2. Attached is a draft agreement reflecting the terms stated in the term sheet. The agreement also includes provisions this office has recommended in past transactions dealing with installation of improvements on County park properties.
3. Please note that the attached draft agreement does not include any specifications relating to the playground equipment, and is fairly light on the details of the installation process. Please let us know if you wish to include additional terms or details addressing this issue.
4. Please also note that the agreement includes blank spaces for (1) the effective date, (2) the duration, and (3) the notice information for Rotary. Please supply the necessary information to fill these blanks before scheduling the agreement for consideration by the Board.
5. Finally, please look over the draft agreement and let us know if you have any other business concerns that should be addressed in the document. Please also provide a draft copy to Rotary (subject to inclusion of any additional terms you deem appropriate). Please provide this office with the opportunity to review any changes to the document via redline or track changes.

Subject to the resolution of the issues stated above, I have no objection from a legal standpoint to the agreement being scheduled for approval by the Board. I express no opinion as to the business judgment of entering into the agreement.

This concludes my response to the RLS. Please let me know if you have any questions or concerns.

Bill Clague
Assistant County Attorney
Manatee County, Florida
ph. 941-745-3750
fx. 941-749-3089
william.clague@mymanatee.org

ROTARY PLAYGROUND AGREEMENT

THIS AGREEMENT ("Agreement") is entered into by and between Manatee County, a political subdivision of the State of Florida ("County"), and the Rotary's Suncoast Playground Project, Inc., a Florida not-for-profit corporation ("Rotary") as of _____, 2017.

WHEREAS, the County is authorized to provide public playground facilities throughout the County and ensure that recreational facilities, equipment, and surfacing is consistent with the generally accepted guidelines of the American with Disabilities Act ("ADA"); and

WHEREAS, the Rotary is a local not-for-profit entity that desires to enhance the County's parks by providing all-inclusive playgrounds with access for all children including facilities in compliance with the ADA requirements; and

WHEREAS, the County is willing to maintain the playground facilities in exchange for the Rotary's installation and purchase of the ADA compliant playground facilities, equipment, and surfacing at certain County public parks; and

WHEREAS, it is in the best interest of the health, safety, and welfare of the residents of the County, and serves a valid public purpose, for the County to enter into this Agreement with the Rotary to provide support for the ADA compliant playgrounds, as further defined herein, to be provided by the Rotary to residents of the County.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the parties hereto agree as follows:

ARTICLE 1: SCOPE OF SERVICE. The Rotary covenants and represents to the County that the Rotary shall develop and make available fully accessible playgrounds in compliance with the ADA, as provided herein, at three park locations in Manatee County, Florida, to include: G.T. Bray Park, Bennett Park and Buffalo Creek Park. Three mutually agreed upon playground sites and accommodated plans will hereinafter be referred to collectively as the "Project." The first location will be G.T. Bray Park. Once GT Bray Park is substantially complete, a second site will be either at Bennett Park or Buffalo Creek Park, to be determined by the County.

ARTICLE 2: OBLIGATION OF THE ROTARY: The Rotary shall, in cooperation with the County, design, plan, permit and build the Project. By executing this Agreement, the Rotary agrees to each of the following obligations:

- a. **Funding.** In support of the Project, the Rotary shall solely be responsible for the funding, and shall strive to raise \$600,000 for each proposed playground site or \$1.8 million for the entire Project, to be used to purchase and install each fully accessible playground.
- b. **Design and Construction.** The Rotary, at its own expense and at no cost to the County, shall develop an initial site plan, which shall be subject to approval by the County. The Rotary and County shall agree upon destination theme for each individual playground.

Thereafter the Rotary, at its own expense and at no cost to the County, shall provide all labor, materials, installation and construction management services necessary for the completion of design and construction of the Project in accordance with the approved initial site plan.

- c. Compliance. The Rotary shall be responsible for ensuring the Project complies with all applicable laws, statutes, ordinances and governmental regulations, including, without limitation, all federal and state laws governing disability access.
- d. Licenses & Permits. Prior to the start of construction, the Rotary shall obtain or cause to be obtained all necessary permits and licenses regarding the installation, possession and use of the playground in full compliance with applicable laws and regulations. Copies of reports provided to or by any licensing or regulatory agency shall be made available upon request of County's representative (as defined in Article 10, the "County's Representative").
- e. Safety and Security. The Rotary shall ensure the security of equipment, tools, supplies and wellbeing of volunteers and all third party vendors assisting with preparation activities from the beginning of the Project until the conclusion of the Project, including any postponement.

The Rotary shall ensure the security of the premise, including without limitation cordoning off the Project area, by tape, signage or other conspicuous equipment, in order to provide notice of construction from the beginning of the Project until the conclusion of the Project, including any postponement.

- f. Costs. The Rotary shall be solely responsible for and shall hold the County harmless for any costs incurred by the Rotary for any prior site preparation, installation, equipment or materials purchased to build the Project. The Rotary shall certify to the County that all funds necessary to complete construction of the Project are in place.
- g. Warranty. The playground equipment and surfacing related to the Project may be covered under warranty by the applicable manufacturers, a copy of which shall be made available upon request of the County's Representative. The County acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the County agrees to look solely to such manufacturers for any such warranty and/or guarantee. The Rotary nor any respective affiliates, directors, officers, managers, partners, members, employees agents or representatives have made or are in any manner responsible or liable for any representation, warranty or guarantee, expressed or implied, in law or in fact, relative to any equipment or material including its quality, mechanical condition or fitness for a particular purpose.
- h. Final Inspection. Upon completion of the Project, the Rotary shall notify the County, via County Representative, in writing that the final inspection may be made. Acceptance of the Project shall be contingent upon a final site inspection conducted by the County. All equipment and services shall be subject to final inspection by the County for purposes of determining if the conditions set forth in this Agreement have been satisfied.

ARTICLE 3: OBLIGATIONS OF THE COUNTY: The County shall cooperate with the Rotary to design, plan and build the Project. By executing this Agreement, the County agrees to each of the following obligations:

- a. Project Site. The County shall provide reasonable and necessary access to the three County-owned park locations in order to enable the Rotary to design, plan, permit and build the playgrounds: G.T. Bray Park, Bennett Park and Buffalo Creek Park.
- b. Initial Site Plan. The County shall cooperate with the Rotary to develop an initial site plan for the Project. The first initial site plan shall be developed for G.T. Bray Park. Once the first project is substantially completed, a development for second site plan shall be initiated. The County shall have final approval authority as to the design of the site plan.
- c. Transfer of Playground. Once the playground equipment and signage have been installed and passed final inspection pursuant to Section 2.h, the County shall take ownership, by acceptance of dedication via a bill of sale.
- d. Maintenance. After acceptance of the Project, the County shall assume all responsibilities for ongoing operation and maintenance of the playground equipment.
- e. Signage. Upon completion of each playground, the County shall provide on-site signage indicating the donor naming rights.

ARTICLE 4: LIMITATION OF COSTS AND PAYMENTS. The Rotary shall be solely responsible and shall hold the County harmless from any costs incurred by the Rotary for prior site preparation, construction and any equipment or materials necessary to build the playground. Any modification to this arrangement must be authorized in writing pursuant to a written amendment to this Agreement approved by the Board of County Commissioners.

ARTICLE 5: CONTRACT DURATION. Unless renewed or terminated as provided in this Agreement, this Agreement shall remain in full force and effect for a period of ___ () year[s], commencing on the date of the final signature below. The Project, whether provided before or after the execution of this Agreement, shall be provided by the Rotary in accordance with all requirements and terms of this Agreement.

ARTICLE 6: TERMINATION.

- a. This Agreement may be terminated by either party for any reason or for no reason by giving to the other party no less than thirty (30) days written notice of intent to terminate. County may terminate this Agreement immediately by delivery of written notice to the Rotary upon determining that the Rotary has failed to comply with the terms of this Agreement. The notice shall specify the manner in which the Rotary has failed to comply with this Agreement.
- b. Upon expiration or termination of this Agreement for any reason, the Rotary shall prepare all final reports and documents required by the terms of the Agreement up to the date of termination.

- c. In the event that this Agreement encompasses multiple Projects, any single Project may be terminated consistent with this Article 6, Termination, and all terms and conditions of this Agreement shall remain in full force and effect to the extent they apply to any Project (s) that has not been terminated.

ARTICLE 6: NOTICES. All notices or written communications required or permitted hereunder shall be deemed to have been given when received if hand delivered or when deposited in the U.S. mail, postage paid and addressed as follows:

If mailed to Rotary: SUNCOAST PLAYGROUND PROJECTS, INC.

ATTN:

If mailed to County: MANATEE COUNTY PARKS & NATURAL
RESOURCES DEPARTMENT
5502 33rd AVENUE DRIVE WEST
BRADENTON, FL 34209
ATTN: DANNY HOPKINS

Notice of termination or withholding of payment shall be served by certified or registered mail, return receipt requested or by hand delivery. Either party may designate a different recipient or address by written notice to the other party.

ARTICLE 7: GENERAL CONDITIONS.

A: MAINTENANCE OF RECORDS; AUDITS

i. The Rotary shall maintain records, accounts, property records and personnel records in accordance with generally accepted accounting principles, as deemed necessary by County to assure proper accounting of funds and compliance with the provisions of this Agreement.

ii. The Rotary shall provide County's representative all necessary information, records and contracts required by this Agreement as requested by County's representative for monitoring and evaluation of services within three (3) business days following the date of such request, or as otherwise agreed upon with County's Representative. The Rotary's information shall be made available to County for audit, inspection or copying during normal business hours and as often as County may deem necessary, except for client records protected by client confidentiality rules or regulations established by State or Federal law. In cases where client confidentiality applies, the Rotary shall provide requested records in a fashion which maintains confidentiality. County shall have the right to obtain and inspect any audit pertaining to the performance of this Agreement or the Rotary made by any local, State or Federal agency. The Rotary shall retain all of its records and supporting documents related to this Agreement in accordance with all applicable laws, rules and regulations; in the absence of any other requirement, such records and supporting documents will be retained by the Rotary for at least three (3) years after the termination of this Agreement.

iii. All forms referenced in this Agreement not attached herein shall be provided or approved by County's Representative and shall be completed and submitted by the Rotary to County as requested.

B: PUBLIC RECORDS. THE ROTARY SHALL:

- i. Keep and maintain public records required by the County to perform the service.
- ii. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes Chapter 119 or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Rotary does not transfer the records to the County.
- iv. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the Rotary or keep and maintain public records required by the County to perform the service. If the Rotary transfers all public records to the County upon completion of the Agreement, the Rotary shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Rotary keeps and maintains public records upon completion of the Agreement, the Rotary shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

IF THE ROTARY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COUNTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 941.742.5845, Debbie.Scaccianoce@mymanatee.org, Attn: Records Manager 1112 Manatee Avenue West, Bradenton FL 34205.

C: COMPLIANCE WITH LAWS; NON-DISCRIMINATION. The performance of this Agreement shall be in compliance with all applicable laws, orders and codes of Federal, State, and local governments and the Americans with Disabilities Act. Additionally, the Rotary covenants and agrees that no person shall on the grounds of race, creed, color, disability, national origin, sex, age, political affiliation or beliefs be excluded from participation in, be denied the benefits of employment by agency, or be subjected to discrimination under any Project or activity funded in whole or in part with funds made available by the County in any manner that is in violation of any provision of the Constitutions of the United States and the State of Florida, or any applicable code, rules or laws.

D: CONTRACTUAL LIABILITY. The relationship of the County to the Rotary shall be that of an independent contractor. Nothing herein contained shall be construed as vesting or delegating to the Rotary or any of the officers, employees, personnel, agents or subcontractors of the Rotary any rights, interest or status as an employee of the County. The County shall not be liable to any person, firm or corporation that is employed by, contracts with or provides goods or

services to the Rotary in connection with the Project or for debts or claims accruing to such parties. The Rotary shall promptly pay, discharge, or promptly take such action as may be necessary and reasonable to settle such debts or claims.

E: SUBCONTRACTORS. In providing any services under this Agreement, the Rotary may, in its sole discretion, subcontract for or otherwise use services provided by third party vendors, provided that the Rotary shall remain jointly and severally liable for the performance of such third party subcontractors and for all obligations under this Agreement.

F. PERFORMANCE BOND. Prior to the time of execution of a contract for construction of the Project, the subcontractor shall file with the Rotary a corporate surety bond, in a sum not less than 100 percent of the value of the construction contract to guarantee the faithful performance of the contract ("Performance Bond"). The Performance Bond shall cover all work required during the construction period any warranty and maintenance work required by the contract, and any and all work required to correct latent defects. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of Florida.

G: NON-ASSIGNABILITY. The Rotary may not assign, transfer or encumber this Agreement or any right or interest in this Agreement.

H: THE ROTARY'S REPRESENTATIVES. Within thirty (30) days from the date of execution of this Agreement by both parties, the Rotary shall provide the County with a list of representatives authorized to act on behalf of the Rotary.

ARTICLE 8: INDEMNIFICATION. The Rotary shall indemnify, keep and hold harmless and defend the County, its agents, officials and employees, against all injuries, deaths, losses, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may accrue against the County arising out of the performance of or failure to perform the Project required by this Agreement or the terms of this Agreement, only to the extent caused through negligence or omission of the Rotary or its employees, or of the subcontractors or its employees, if any. The Rotary shall pay all charges of attorneys and all costs and other expenses incurred in connection therewith, and if any judgment shall be rendered against the County in any such action, the Rotary shall, at its own expense, satisfy and discharge the same. Any performance bond or insurance protection required by this Agreement, or otherwise provided by the Rotary, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided. The indemnity hereunder shall continue until such time as any and all claims arising out of the Rotary performance or failure to perform under this Agreement have been finally settled, regardless of when such claims are made.

In the event that any action, suit or proceeding is brought against the County upon any liability arising out of this Agreement, County shall give notice thereof in writing to the Rotary at the above listed address. Upon receipt of notice, the Rotary, at its own expense, may defend against such action and take all such steps as may be necessary or proper to prevent a judgment against the County. Nothing in this Agreement shall be deemed to affect County's right to provide its own defense and to recover from the Rotary's attorney's fees and expenses associated with such representation or the rights, privileges and immunities of the County as set forth in Florida Statute 768.28.

ARTICLE 9: INSURANCE. Without limiting any of the other obligations or liabilities

of the Rotary, the Rotary shall, at the Rotary's sole expense, procure, maintain and cause all contractors hired by the Rotary to maintain, and keep in force amounts and types of insurance necessary to cover the cost of its obligations pursuant to Article 8. This shall include, but not be limited to:

- (a) Commercial General Liability Insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (b) Errors and Omissions Insurance.

The commercial general liability policy and errors and omissions policy shall be endorsed to name Manatee County, a political subdivision of the State of Florida, as an additional insured and a Certificate of Insurance evidencing such endorsement and entitlement to notice of cancellation or termination shall be provided. Any subcontractor hired by the Rotary for the completion of this Project shall name Manatee County as an additional insured to their commercial general liability policy.

Until such time as the insurance is no longer required, the Rotary shall provide the County with renewal or replacement certificates of insurance not less than the day prior to the expiration or replacement of the insurance for which a previous certificate has been provided. In the event a renewal or replacement certificate is not available the Rotary shall, not less than the day prior to expiration of any existing policy, provide County with evidence of a binder proving continuation of coverage and a new certificate as reasonably soon as possible.

The Rotary shall immediately notify County upon lapse in the coverages required by this Agreement or cancellation of any of the insurance policies. The Rotary shall not provide any services under this Agreement during any such period of lapse or after cancellation of the insurance coverages required herein without the express written permission of the County's Representative.

ARTICLE 10: COUNTY'S REPRESENTATIVE. Manatee County Parks and Natural Resources Division Manager shall serve as the County's Representative and is authorized to interpret this Contract and designate such additional employees as may be required to monitor the Rotary' performance, provide technical assistance, and assume other administrative duties associated with the implementation of this Agreement. Disputes over any provision not satisfactorily resolved with the County's Representative shall be referred to the County's Parks and Natural Resources Director or his designee.

ARTICLE 11: AMENDMENTS. This Agreement may not be modified, amended or extended orally. This Agreement may be amended only by written agreement approved by the governing bodies of both parties.

ARTICLE 12: SEVERABILITY. In the event that any paragraph of this Agreement is adjudged by a court of competent jurisdiction to be invalid, such adjudication shall not affect or nullify the remaining paragraphs hereof, but shall be confined solely to the paragraphs involved in such decision.

ARTICLE 13: HEADINGS. All articles and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

ARTICLE 14: CATASTROPHIC EVENTS. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by a hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other cause beyond the reasonable control of the party obliged to perform.

ARTICLE 15: DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall be reason hereof accrue upon, to, or for the benefit of any third party, including without limitation any subcontractors of the Rotary and any providers of promotional, advertising or other services, or goods, purchased by the Rotary. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof.

ARTICLE 16: CONSTRUCTION. This Agreement represents the full agreement of the parties. Each of the parties hereto has had equal input into drafting of this Agreement such that no provision of this Agreement shall be construed strictly against one party as the drafter thereof.

In the event of a conflict between the terms and conditions provided in the body of this Agreement and any attachment or exhibit hereto, the provisions contained within the body of this Agreement shall prevail unless the term or provision in the attachment or exhibit specifically states that it shall prevail.

ARTICLE 17: WAIVERS. Neither this Agreement nor any portion of it may be modified or waived orally. However, each party, through its governing body or properly authorized officer, shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

ARTICLE 18: GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any action to enforce any of the provisions of this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, or, to the extent any proceeding is removed to federal court, the United States District Court for the Middle District of Florida, Tampa Division.

ARTICLE 19: REMEDIES. Each party hereto shall have such remedies as are available pursuant to applicable law for any breach or non-performance by the other party.

ARTICLE 20: ATTORNEYS FEES AND COSTS. Each party hereto shall be solely responsible for paying its attorney's fees and costs in any dispute, litigation, dispute resolution proceeding, settlement negotiation or pre-litigation negotiation arising under this Agreement.

ARTICLE 21: EFFECTIVE DATE. This Agreement shall take effect as of the date set forth above.

ARTICLE 22: AUTHORITY TO EXECUTE. Each of the parties hereto covenants to

the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their names, by their authorized representatives, effective as of the date set forth above.

ROTARY SUNCOAST PLAYGROUNDS, INC.

By: _____

Print Name: _____

Title: _____

Phone Number: _____

**MANATEE COUNTY, FLORIDA,
a political subdivision of the State of Florida**

By: Board of County Commissioners

By: _____
County Administrator