

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: May 12, 2015		DATE SUBMITTED: April 27, 2015	
DEPARTMENT OF ORIGIN: City Manager's Office		SUBMITTED BY: Hugh R. Walker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of a First Amendment to the Design/Build Agreement between the City of Bryan and Grindline Skateparks, Inc. to extend the agreement, dated May 29, 2014, for six (6) months.			
SUMMARY STATEMENT: On April 15, 2014, the Parks & Recreation Advisory Board unanimously recommended forwarding to the City Council a design/build agreement between the City of Bryan and Grindline Skateparks, Inc. On May 27, 2014, the City of Bryan City Council unanimously approved a design/build agreement with Grindline Skateparks.			
<p>The agreement, dated May 29, 2014, is in the not to exceed amount of \$1,200,000 and includes the designing and constructing of at least one skate park. The agreement states "Substantial Completion" of the entire Project should occur "within 214 calendar days after the effective date" of the agreement.</p> <p>Since City Council approval of the agreement, two (2) public meetings were held, numerous updates have been provided to the Parks & Recreation Advisory Board, and the City Council has discussed skate parks at several meetings. On August 7, 2014, the City Council directed staff to remove one site (Buzz Hamilton Park) from consideration and continue to review possible sites. On January 13, 2015, the City Council was updated and requested staff to continue to evaluate sites. On April 14, 2015, the City Council was provided legal advice regarding the design/build agreement terms as the 214 calendar days had expired.</p> <p>As a reminder, at the time of the agreement, the City of Bryan had two (2) modular skate parks: one in Williamson Park and one in Henderson Park. The Williamson Park modular skate park was identified as unsafe and in need of removal, and on January 21, 2015, the City Council was informed of the pending removal. On January 26, 2015, the Williamson Park modular skate park was removed, which leaves the City with one modular skate park. (Note: When modular skate parks are constructed, State statutes provide municipalities with liability immunity. However, once a municipality makes modifications to a modular skate park unit, the City assumes the liability.)</p> <p>For the design/build agreement to continue with Grindline, an agreement extension is required. If this proposed amendment is approved, the City has six (6) months from the execution of this Amendment to select one or more sites for a skate park. After the six months or sooner if a site is chosen, the contractor then will have 214 calendar days to complete the Project, which results in the new "Scheduled Completion Date" and "Deadline for Substantial Completion" as those terms are used in the Agreement. During this site review process, the contractor will have a maximum work allowance of \$10,000.</p> <p>Based on recent discussions, City staff has included a Council Action Form on this same agenda to complement this Council Action Form. Approving this Council Action Form does not require approval of the other Council Action</p>			

Form. The other Council Action Form identifies one (1) skate park site, which is Williamson Park. If the City Council approves the proposed agreement amendment but does not support the Williamson Site as the sole site, then staff will work with the contractor to identify an alternative site(s).

STAFF ANALYSIS AND RECOMMENDATION: City staff recommends approving the proposed six (6) month extension to the design/build agreement. The extension allows for the City to continue pursuing a new skate park. If constructed, a new skate park will be the first onsite constructed skate park in the City.

As proposed, if the City Council approves the proposed agreement amendment without taking any other action or approving the complementary Council Action Form (for Williamson Park), staff will work with the contractor for up to six (6) months to identify possible sites. The City Council will need to take action to approve a project site(s). However, if the City Council approves the other Council Action Form (for Williamson Park), future City Council consideration will not be required.

Designing and building a new skate park requires the expenditure of public funds. Currently, the agreement is an amount not to exceed \$1,200,000; however, until the skate park is designed, an actual cost is not known. To date, the City has expended approximately \$18,900 on this agreement.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the proposed agreement extension
2. Modify and then approve the proposed agreement extension, which may require additional discussions and negotiations with Grindline, and consideration at a future City Council meeting
3. Do not approve the proposed agreement extension and terminate the design/build agreement

ATTACHMENTS:

1. Proposed agreement extension
2. Design/build agreement dated May 29, 2014 (separate pdf file)

FUNDING SOURCE: As approved in the FY2015 Budget (General Fund)

APPROVALS: Hugh R. Walker, 04/27/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 27Apr2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY

**FIRST AMENDMENT TO DESIGN/BUILD AGREEMENT BETWEEN
CITY OF BRYAN, TEXAS AND GRINDLINE SKATEPARKS, INC.**

THIS FIRST AMENDMENT TO DESIGN-BUILD AGREEMENT (“Amendment”) is made and entered into effective as of the ____ day of _____, 2015, and between the City and Contractor as those parties are defined in the original Agreement entered into on May 29, 2014.

WHEREAS, the parties entered into the original Agreement to design and build one or more skate parks, to include concrete bowls and/or street style elements, at several sites previously identified by the City staff in consultation with a citizen committee; and

WHEREAS, objections from citizens eliminated several of the sites, and the parties were unable to begin design and construction before the deadline for Substantial Completion had passed; and

WHEREAS, the parties still desire to proceed, but the City needs time to select one or more sites for the Project and/or to reevaluate the plans; and

NOW, THEREFORE, the parties agree as follows:

1. All defined terms used in the Agreement shall have the same meaning when used herein. Except as explicitly modified herein, all terms and conditions of the Agreement remain in full force and effect.

2. The parties agree that the City has six (6) months from the execution of this Amendment to select one or more sites for the Project. The selection shall be made by the City Council. Once the City Council has approved one or more sites, the City will send a written notification with a description of the site or sites. Contractor shall have 214 calendar days from the date of that written notification to complete the Project, which shall be the new “Scheduled Completion Date” and “Deadline for Substantial Completion” as those terms are used in the Agreement.

3. In the event that the City is unable or unwilling to select one or more sites for the Project within the six (6) month period, the Agreement shall terminate. The failure of the City to select a site does not constitute a breach of the Agreement by the City. The Contractor may submit an invoice for the unpaid design services provided up to the point of termination, not to exceed \$10,000.00. The City shall pay that amount within thirty (30) calendar days following receipt of such invoice.

Executed to be effective as of the date executed by all parties, as above written.

CITY OF BRYAN:

GRINDLINE SKATEPARKS, INC.:

Jason P. Bienski, Mayor

Matt Fluegge, Chief Operations Officer

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM

Janis K. Hampton, City Attorney