

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: October 22, 2013		DATE SUBMITTED: October 3, 2013	
DEPARTMENT OF ORIGIN: PW- Engineering		SUBMITTED BY: W. Paul Kaspar	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider executing an Interlocal Agreement (ILA) with Bryan Independent School District (BISD) to allow for construction of a detention pond on the Bonham Elementary School property as part of the Old Hearne Road Reconstruction Project.			
SUMMARY STATEMENT: On May 28, 2013, the City Council approved the Engineering Design Contract with Freese and Nichols for the Bonham Elementary Detention Design for collaborative use in the Old Hearne Road Reconstruction Project. The stormwater detention pond was recommended as a result of the Still Creek Watershed Study in February 2012. The Bonham School property detention pond was one of two ponds recommended in the study. At the same City Council meeting, a separate design contract with Jones and Carter was approved for the Old Hearne Road Reconstruction Design Project to widen and convert a portion of Old Hearne Road to a curb and gutter section. The scopes of these contracts were coordinated such that Jones and Carter will be incorporating into their construction plans the results from Freese and Nichols Detention Pond Design.			
			

City staff has been working with BISD to come to an agreement on the pond construction on their Bonham School property. The attached interlocal agreement (ILA) is scheduled to be considered by the BISD Board of Directors on October 21, 2013. The agreement will allow the construction of the pond on BISD property. BISD will perform routine maintenance of the pond but the City will maintain any structural issues with the outlet box. The City will pay for construction of the detention pond (estimated between \$640,000 - \$800,000) and a concrete play slab with basketball goals, a baseball backstop and a kid sized soccer facility (estimated at \$50,000 - \$75,000) all located in the bottom of the detention pond, but on a slightly higher plateau within the pond to avoid frequent rainfall inundations. This joint cooperation will allow for mitigation of flooding in the adjacent neighborhood and provide the school and neighboring area recreational facilities when the pond is not in use.

The City of Bryan has submitted a grant to the Texas Water Development Board to fund the construction improvements for the Lyndale Acres flooding, which includes this stormwater detention pond. The City Council approved the resolution for this grant application at the September 10, 2013, City Council meeting. If the City is successful at receiving the grant, scope can be expanded to include both detention ponds and improve multiple culvert crossings downstream that contribute to the flooding conditions. The funds set aside for funding this detention pond would go toward any local match required by the grant.

STAFF ANALYSIS AND RECOMMENDATION: Staff recommends executing this Interlocal Agreement with BISD to allow for the design of the detention pond to proceed with ultimate construction of the detention pond at Bonham Elementary. This joint cooperation will allow for mitigation of flooding in the adjacent neighborhood and provide the school and neighboring area recreational facilities when the pond is not in use.

OPTIONS (In Suggested Order of Staff Preference):

1. Execute the Interlocal Agreement with Bryan Independent School District.
2. Do not execute the Interlocal Agreement with Bryan Independent School District and provide direction to staff.

ATTACHMENTS:

1. Proposed Interlocal Agreement with BISD

FUNDING SOURCE: Actual funding of improvements will come before the City Council under a separate item with the construction contract in 2014. Estimated cost of stormwater detention facility ~ \$690,000 to \$875,000. Source - 2010 Certificates of Obligation – Fund 368 (as identified in the Capital Improvement Plan)

APPROVALS: Jayson E. Barfknecht 10/08/13; Hugh R. Walker, 10/08/2013

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 10/14/2013

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 10/14/2013

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is entered into by and between the City of Bryan, a Texas Home Rule Municipal Corporation (referred to hereinafter as the “City”), and the Bryan Independent School District (referred to hereinafter as the “District”), a political subdivision of the State of Texas.

I. RECITALS

WHEREAS, the District operates Bonham Elementary School located at 3100 Wilkes Drive, in the City of Bryan; and

WHEREAS, the District owns adjacent open space to the current school campus that could be utilized as play fields; and

WHEREAS, the residential subdivision downstream of the Bonham Elementary School campus has experienced repetitive and severe structure flooding over the last 6 years; and

WHEREAS, the City has utilized Texas Water Development Board Grant Funds to study the flooding situation and develop regional solutions to the problem including new storm sewer and regional storm water detention ponds; and

WHEREAS, such existing flooding conditions represent a public health, safety issue for both the City and the District; and

WHEREAS, the City has a Capital Improvement Project that will reconstruct Old Hearne and Wilkes Streets adjacent to Bonham School; and

WHEREAS, the City and the District have devised a plan to alleviate the flooding issues by constructing a storm water detention pond on the undeveloped school land that would also serve as a play area for children most of the time when the pond is dry; and

WHEREAS, such plan requires the City to construct a storm water detention pond on the school property and construct a 75 ft by 75 ft concrete play slab with 6 basketball goals (2 on each side and 1 on each end), baseball backstop made of chain-link with heavy duty post and rail sizing approximately 30 feet wide and 15 feet tall, and a kid sized soccer facility located in the bottom of the detention pond being approximately 30 yards by 60 yards in size; and

WHEREAS the City will elicit input and final approval of design plans for the play area; and

WHEREAS, such plan would include the construction of an outlet structure with safety features to minimize the threat of injury during a rain event; and

WHEREAS the District would provide a temporary construction easement to the City for such construction; and

WHEREAS the District would maintain the stormwater detention facility including improvements listed above in the detention pond; and

WHEREAS the District would provide routine maintenance of the outlet structure but the City of Bryan would provide any structural maintenance or replacement of the outlet structure; and

WHEREAS, the City would maintain everything downstream of the outlet structure, which would consist of public infrastructure in public right-of-way; and

WHEREAS, the schematic concept for said improvements are attached hereto as an exhibit and made a part hereof for all purposes; and

WHEREAS, the described improvements, in addition to addressing the public health and safety concerns of both the City and the District, also enhance the functionality of the District's school campus by providing a dual use facility where kids can recreate when the pond is dry and provide significant drainage benefits to downstream properties; and

WHEREAS, the described improvements are, for the reasons stated above, beneficial and desired by both the City and the District; and

WHEREAS, the City and the District are authorized to make and enter into this Agreement under the Interlocal Cooperation Act, Texas Government Code, § 791.001 *et seq.*, and other applicable laws of the State of Texas.

II. AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and obligations herein, the City and the District hereby contract and agree as follows:

1. Construction of Improvements The City shall construct the detention pond as described above and in general accordance with the schematic plan attached hereto and with the following (or approved equal) equipment:

- a. Basketball Backboard, Rim and Goal – MacGregor 5005N5WBLR 5' Ext – White Backboard with Shooter's Square – found in BSN catalog – with heavy duty rim replacement. The post is a 4 ½" OD galvanized steel post.
- b. Baseball Backstop – Built in place – 4" nominal vertical poles set in concrete, 2" nominal horizontal rails, three sections of 9 gauge galvanized woven wire, each 10' wide and 15' tall for a total size of 30'x15'.
- c. Soccer Goal – Kwik Goal – 3" round aluminum construction, 3mm white net, 4 ground anchors –12' or 18' width goal. A 12' goal is recommended through age 6 or 7 and 18' for older children. The number in BSN catalog for 6.5'h by 18.5'w is 1291094 and for the 12' is 1291100.

2. Reimbursement of Costs In exchange for utilizing the District's property for the storm water detention facility and agreeing to maintain as part of the Bonham Elementary School campus, the City will not seek any reimbursement of costs from the District for the construction of the detention pond, play slab or soccer field.

3. Access to and Maintenance of Facilities

- a. The operation and maintenance of the said storm water detention pond, play slab and play equipment shall be the responsibility of the District and any costs associated therewith shall be borne by the District, unless, in the City's discretion, the City

determines that such requirements are beneficial to the City, in which event, the City may bear all or a portion of such costs.

b. The District shall be responsible for keeping the pond in good condition to comply with the City's Storm Water Management Ordinance and shall be responsible for the reasonable care and protection of the storm water detention facility when used and, to the extent permitted by law, shall be liable for damage to the storm water detention facility which result from District sponsored activities.

4. Safety Measures The District shall be responsible for implementing any safety measures as it deems necessary under the circumstances for school related activities.

5. Delegation of Authority The City Manager of the City and the Superintendent of the District, or their respective designees shall be authorized to coordinate terms and conditions of the use, alteration and operation of the facilities for the benefit of the District and the City as may be necessary, but only to the extent of their authority under applicable local ordinances, charters, or policies or applicable state bidding and other laws.

6. Contract Authority The City has been authorized by Resolution to enter into this Agreement. The District has been authorized by Resolution to enter into this Agreement.

7. Term This Agreement shall begin on the date of the last signature below and shall continue for a period of one year. This Agreement shall automatically renew for successive one year terms unless either party elects to terminate the Agreement by providing written notice to the other within 30 days of the expiration of any one year term.

8. Available Funds All expenditures under this Agreement by either party shall be from current available revenues in accordance with Texas Government Code, § 791.011 (d) (3).

9. Notices Any and all notices and requests made under the terms of this Agreement shall be in writing and delivered to the parties at the addresses indicated below or at such address as either party may furnish in writing to the other party herein named:

City of Bryan
Attn: City Manager of Bryan
P.O. Box 1000
Bryan, Texas 77805

Bryan Independent School District
Attn: Superintendent
101 N. Texas Ave.
Bryan, Texas 77802

10. Assignment This Agreement shall be restricted to the City and the District. The rights, privileges and responsibilities pursuant to this Agreement are specifically prohibited from assignments to any third party.

11. Indemnification and Limitation of Liability To the extent permitted by law, each party shall indemnify against and hold the other party to this Agreement, and their directors, officers and employees, free and harmless from and against any and all claims, demands, causes of action, suits or other proceedings or any and all damages or losses (including all costs in connection

therewith and in connection with the defense thereof, including reasonable attorney's fees) of every kind and character arising on account of bodily injuries, death, damage to property or economic loss in any way occurring, incident to arising out of or in connection with this Agreement caused by the indemnifying party in proportion to the fault of the indemnifying party. In no event shall either party, by reason of any of their respective acts or omissions relating to any of their obligations under this Agreement, be liable to each other, whether in contract, tort, misrepresentation, warranty, negligence, strict liability or otherwise, for any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement, or the performance or breach thereof.

12. Applicable Law and Severability This Agreement shall be subject to all valid laws, rules, and regulations of the United States and the State of Texas, or any governmental body or agency having jurisdiction thereof. If any provision of this Agreement is held to be illegal or in conflict with any law or regulation, the validity of the remaining provisions of the Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

13. Entire Agreement This Agreement constitutes the entire agreement between the Entities respecting the subject matter hereof and supersedes any prior understanding or written or verbal agreements concerning same.

14. No Third Party Beneficiaries Nothing in the Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any person who is not a party to this Agreement. No person that is not a party to this Agreement shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Entities, and the Entities expressly disclaim any intent to create any rights in any third party as a third party beneficiary to this Agreement or the services to be provided hereunder.

AGREED and EXECUTED on the dates below.

CITY OF BRYAN

BRYAN INDEPENDENT SCHOOL DISTRICT

By: _____
Jason P. Bienski, Mayor

By: _____
Douglas Wunneburger, Board President

Date: _____

Date: _____

ATTEST:

Mary Lynne Stratta, City Secretary

Board Secretary:

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

Attorney: