

## ALL-INCLUSIVE PLAYGROUND DONATION AGREEMENT

**THIS AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of McKinney, Texas (the "City") and the McKinney Sunrise Rotary Club (the "Club"), for the purpose of providing funding for the design and construction of an All-Inclusive Playground (the "Project") at Bonnie Wenk Park.

### WITNESSETH:

**WHEREAS**, City owns Bonnie Wenk Park which park is currently in Phase II design; and

**WHEREAS**, the Club desires to donate funds to the City for the cost of the design and construction of the Project within Bonnie Wenk Park, as such is conceptually shown on Exhibits A and B, attached hereto and made a part hereof for all purposes; and

**WHEREAS**, City and Club are mutually desirous of entering into this Agreement for the benefit of the public; and

**WHEREAS**, the Club offers and by these premises agrees to make a donation(s) to the City, in the amounts and upon the terms and conditions set forth in this Agreement; and

**NOW, THEREFORE**, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Club covenant and agree as follows:

1. Subject to the provisions of Paragraph 4 below, Club shall donate and tender funds (the "Initial Donation") in the amount of thirty thousand dollars (\$30,000.00) for the design of the Project within 10 calendar days of the date of this Agreement. It is specifically understood and agreed by City and Club that the Initial Donation shall be used only for the design of the Project as the City directs and as further provided hereinafter.

2. The City shall prepare a Scope of Services for its design consultant, *la terra studio*, as needed for completion of the Project.

3. Services to be provided by the design consultant shall include:

- a. Preparation of a concept design for review by the Club and final approval by the City and Club
- b. Completion of preliminary plans for review by the Club and final approval by the City and Club

- c. Completion of playground marketing renderings for review by the Club and final approval by the City; and
- d. Completion of Project bidding documents utilizing “bid alternates” as needed for project bidding and construction for review by the Club and final approval by the City.

4. If the contract amount for design services is greater than the Initial Donation, the Club shall be notified of such increased cost and shall within 30 days of such notice increase the amount of the Initial Donation to the contract amount. The City shall thereafter execute a professional services agreement with *la terra studios* and make payments to it from the Initial Donation.

5. If Club fails to increase the amount of the Initial Donation within 30 days of City’s notice to Club of the need for such increase, the City may terminate this Agreement upon written notice to the Club, and thereafter City’s obligations hereunder shall terminate. Upon termination by the City under this provision, the City shall refund the Initial Donation to Club, less any costs and expenses incurred by City in the preparation of the Scope of Services.

6. If City fails to execute an agreement with a design professional for the design of the Project within 60 days following the execution of this Agreement, this Agreement shall automatically terminate and both City’s and Club’s obligations hereunder shall terminate. Upon termination under this provision, the City shall refund the full amount of the Initial Donation to Club.

7. Club and City specifically understand and agree this Agreement provides only for (a) the preparation of a conceptual plan, and (b) the preparation of the ultimate design and construction bidding documents for the Project. It is also agreed and understood that notwithstanding the suitability of the resulting design and construction drawings for the Project that neither the City nor the Club shall have any further responsibility or obligation regarding the future construction of the Project. The Club has committed to a fund-raising goal of \$500,000 to provide funding for the future construction of the Project. If Club tenders additional funding for construction of the Project, the City, after consultation with Club, will determine the timing and construction schedule for any phase of the Project utilizing such additional funding. City agrees that no additional funding donated by Club shall be expended on maintenance, repair or replacement of any park improvements. Save and except the foregoing, Club agrees that City shall have no obligation to refund any additional funds donated by Club upon its tender to City in conjunction with the future construction of the Project. Club acknowledges and agrees that its tender of additional funding may be a condition or prerequisite to City’s execution of future construction contracts for any phase of the Project.

8. City, by executing this Agreement, makes no representations of any kind or quality regarding the suitability of the resulting plans for the Project or Club’s satisfaction with the resulting plans for the Project. Club does hereby waive and agree

to hold City harmless from and against any and all claims regarding, related to or otherwise arising out of City's selection of or payment to the design professional to design the Project, the suitability of the resulting plans for the Project, and Club's satisfaction or lack of satisfaction with the resulting plans for the Project. Club shall have no obligation to provide future funding beyond the Initial Donation. To the extent allowed by applicable law, City agrees to release and hold harmless Club from any future maintenance obligations and any liability claims arising from public use of the Project.

9. This Agreement is being executed and delivered, and shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie exclusively in Collin County, Texas.

10. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other.

If to the City:           The City of McKinney, Texas  
                                  P.O. Box 517  
                                  McKinney, Texas 75070  
                                  Attn: City Manager's Office

If to Club:                McKinney Sunrise Rotary Club  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

12. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

13. Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

14. An electronic, duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

15. The Interim City Manager of the City of McKinney has the authorization to execute this Agreement on behalf of the City.

16. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

17. The Agreement shall become a binding obligation on the parties hereto upon execution by all signatories. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Club warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Club to same.

**IN WITNESS WHEREOF**, the parties hereto have caused this document to be executed as of the date first above written.

**THE CITY:**

THE CITY OF MCKINNEY, TEXAS

TOM MUEHLENBECK  
Interim City Manager

**THE CLUB:**

By:

Title:

THE STATE OF TEXAS §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared **TOM MUEHLENBECK**, Interim City Manager of the City of

McKinney, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on CITY's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS §  
COUNTY OF COLLIN §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of McKinney Sunrise Rotary Club, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of and as the act of McKinney Sunrise Rotary Club.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County, Texas  
My commission expires \_\_\_\_\_