



City of Grand Island

Tuesday, July 28, 2020

Council Session

Item I-5

#2020-180 - Consideration of Approving Donation Agreement with JBS-USA for Hike Bike Trail Expansion and Playground Improvements

Staff Contact: Todd McCoy

Council Agenda Memo

From: Todd McCoy, Parks and Recreation Director

Meeting: July 28, 2020

Subject: Consideration of Approving Donation Agreement with JBS USA for Hike Bike Trail Expansion and Playground Improvements

Presenter: Todd McCoy, Parks and Recreation Director

Background

JBS has approached the City to provide \$1,000,000 of funding to build a new playground at the Veteran's Sports Complex and extend the existing beltline hike/bike trail system. The funding for this project comes from a recent JBS Hometown Strong initiative to support local communities.

Discussion

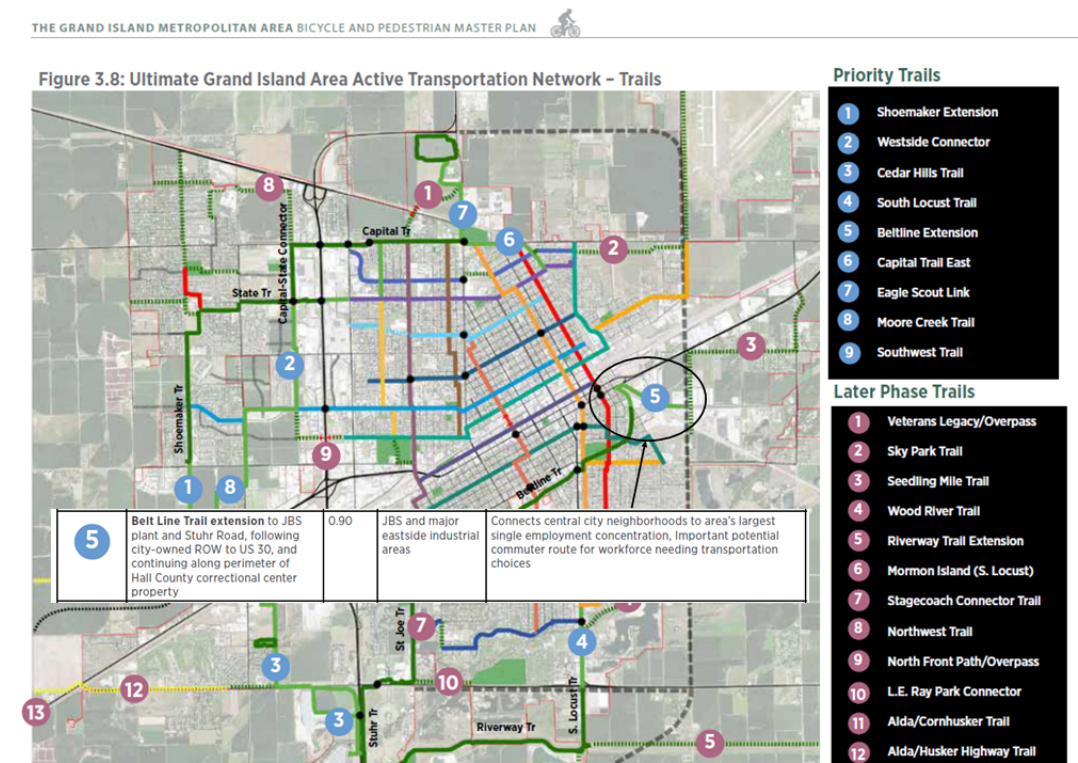
Veteran's Sports Complex Playground Addition:

Space for future playground equipment was dedicated in the design of the Veteran's Sports Complex just west of the splash pad. The splash pad and fields have proved to be a very popular area. The playground will greatly compliment the family area that currently includes green space, picnic shelters, and the popular splash pad. The estimated cost of the playground is \$350,000 - \$400,000.



Beltline Trail Extension:

The John Brownell Beltline Trail currently ends at Cherry Street in east Grand Island. The proposed 10' wide concrete trail will be approximately one mile extending the existing trail east and ending at the JBS plant. The trail extension project is listed as a Phase I "Priority Trail" in the recent Grand Island Metropolitan Area Bicycle and Pedestrian Master Plan because of its added safety, connectivity, and anticipated high use. The estimated cost of the trail is \$550,000 - \$650,000.



Alternatives

The Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the agreement.
2. Take no action on the issue.

Recommendation

City Administration recommends that Council approve the agreement with JBS to accept \$1,000,000 for the construction of the Beltline Trail Extension and Playground at the Veteran's Sports Complex.

Sample Motion

Move to approve the agreement with JBS USA to construct the Beltline Trail Extension and Playground at the Veteran's Sports Complex.

RESOLUTION 2020-180

WHEREAS, JBS USA has approached the City to provide a \$1,000,000 donation to the Parks and Recreation Department; and

WHEREAS, the \$1,000,000 donation would be earmarked for a new playground at the Veteran's Sports Complex and extend the existing John Brownell hike/bike trail system; and

WHEREAS, the City shall grant JBS USA mutually agreed upon name and logo recognition for the park playground and trail extension.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City of Grand Island accept the \$1,000,000 donation and enter into an agreement for the John Brownell hike/bike trail extension and new playground at the Veteran's Sports Complex.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 28, 2020.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
July 24, 2020	▣ City Attorney

DONATION AGREEMENT

1. PARTIES. This Donation Agreement (the "Agreement") is made and entered into this 28th day of July, 2020, by and between _____ located at _____ ("Donee") and JBS USA Food Company, a Delaware corporation located at 1770 Promontory Circle, Greeley, Colorado ("Donor") (each a "Party," collectively, the "Parties").

2. RECITALS AND PURPOSE.

2.1. The Donor commits to provide the Donee with the Donation Funds set forth in **Exhibit A** for sole purpose set forth in **Exhibit A**; and

2.2. The Donee, in recognition of Donor's commitment, wishes to provide Donor with the Benefits set for in **Exhibit B**.

Accordingly, in consideration of the mutual promises set forth in this Agreement, the parties covenant and agree to the terms and conditions set forth in the following paragraphs.

3. FUNDS. The Donor agrees to disburse to the Donee those funds indicated on the attached **Exhibit A** ("Donation Funds" or "Gift") in accordance with the Fund Disbursement Schedule set forth therein. The Donation Funds shall be used for the sole purpose(s) set forth in **Exhibit A**.

4. RECOGNITION. In recognition of the Donor's commitment set forth in Section 3 of this Agreement, Donee shall provide Donor's with the Benefits ("Benefits") set forth in **Exhibit B**.

5. RECEIPT. Within five (5) business days of receiving the Donation Funds or Gift (of the first installment thereof) listed in **Exhibit A** the Donee shall provide the Donor with a receipt. The receipt must be written on the official letterhead of the Donee and contain the following information: a) the name of the Donee as listed in Section 1 of this Agreement, b) the date the Donation Funds or Gift (of the first installment thereof) was given, c) the amount of the Donation Funds as set forth in **Exhibit A**, d) a description of any non-monetary Gift set forth in **Exhibit A**, and e) either a statement that no goods or services were provided by the Donee in exchange for the Donation Funds or the Gift, or description and good faith estimate (no estimate is need for naming rights) of the value of goods or services set forth in **Exhibit B**.

6. DONEE TAX STATUS. The Donee is either a) state, a possession of the United States, or any of their political subdivisions, the United States, or the District of Columbia, or b) a corporation, trust, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. The Parties desire that the Gift made by this Agreement to be made in compliance with all of the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), the accompanying Treasury Regulations governing charitable organizations formed in accordance with the Code, and any other applicable laws governing charitable donations.

7. LICENSE. The Donor grants to the Donee a nonexclusive, non-transferable, non-sublicensable license to use certain "Donor Trademarks" owned by the Donor solely in connection with this Agreement. "Donor Trademarks" shall mean solely the Donor trade names, marks and logos specified in **Exhibit C** hereto; provided, however, that the Donor in its sole discretion from time to time, may change the appearance and/or style of the Donor Trademarks or add or subtract from the list in **Exhibit C**, provided that, unless required earlier by a court order or to avoid potential infringement liability, Donee shall have 30 days' notice to implement any such changes. Donee

hereby acknowledges and agrees that, (i) the Donor has represented to Donee that the Donor Trademarks are owned solely and exclusively by the Donor, (ii) except as set forth herein, the Donee has no rights, title or interest in or to the Donor Trademarks and (iii) all use of the Donor Trademarks by the Donee shall inure to the benefit of the Donor. Donee agrees not to apply for registration of the Donor Trademarks (or any mark confusingly similar thereto) anywhere in the world. Notwithstanding the foregoing, any use of the Donor Trademarks pursuant to this license shall require the prior consent of the Donor.

7.1. Ownership. Donee acknowledges and agrees that the presentation and image of the Donor Trademarks should be uniform and consistent with respect to all services, activities and products associated with the Donor Trademarks. Accordingly, Donee agrees to use the Donor Trademarks solely in the manner that the Donor shall specify from time to time in the Donor's sole discretion. All usage by Donee of the Donor Trademarks shall include the appropriate trademark symbol. No use of the Donor Trademarks shall be permitted without the prior consent of the Donor.

8. TERMINATION. Donor may immediately terminate this Agreement with no further liability to Donee if Donee at any time breaches its obligations under this Agreement, and Donee does not cure such failure within thirty (30) days after receipt of written notice from the Donor.

9. RELATIONSHIP. Notwithstanding any provision to the contrary in this Donation Agreement, the Parties agree that their relationship with respect to the Gift contemplated herein is one of donor and donee only, and no provision of this Donation Agreement shall be construed to create any other type of status or relationship between the Parties with respect to such Gift. Neither Party nor its agents or employees are the representatives of the other Party for any purpose and neither Party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.

10. LIMITATION OF LIABILITY. Neither Party shall be liable to the other or any third party for any consequential, indirect, incidental, special, or punitive damages. The aggregate liability of each Party under this agreement shall be one-thousand dollars (\$1,000).

11. FORCE MAJEURE. Neither Party shall be deemed to have defaulted or failed to perform under this Agreement if that Party's ability to perform or default shall have been caused by an event or events beyond the control and without the fault of that Party, including fire, flood, explosion, act of God or a public enemy, strike, labor dispute, civil riot, pandemic, or the ability of Donor to provide the Gift is impacted by any of the foregoing ("Force Majeure Event"). Upon the occurrence of the Force Majeure Event, the Party claiming the Force Majeure Event shall promptly notify the other Party in writing of such event. Notwithstanding the foregoing, in the event of a Force Majeure Event, each Party agrees to make a good faith effort to perform its obligations hereunder.

12. ASSIGNMENT. The provisions of this Agreement will be binding on the Parties' successors and assigns. Upon notice to the other party, either party may assign this Agreement in whole or in part to any affiliate or subsidiary, or any party acquiring substantially all of the stock or assets of that party. Any other assignment shall require the prior written consent of the other party. Such consent not to be unreasonably withheld.

13. NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given

at the address set forth in Section 1 of this Agreement. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

- 14. EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.
- 15. PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
- 16. ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
- 17. INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.
- 18. WAIVER OF BREACH.** The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
- 19. GOVERNING LAW.** The construction and interpretation of this Agreement and any disputes arising hereunder (whether for breach of contract, tortious conduct or otherwise) shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving reference to its conflict of laws principles. In the event any suit, action or proceeding is brought by either party with respect to this Agreement or the matters contemplated herein, such action, suit or proceeding shall be brought in the state courts located in Weld County, Colorado and both Parties hereby accept, consent and submit to the exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- 20. SEVERABILITY.** If any provision of this Agreement is declared to be invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.
- 21. AUTHORITY.** The Donee represents that it has full power and authority to execute this Agreement and to carry out the transactions contemplated hereby, and that all corporate action on the part of the Donee, its officers, directors and shareholders and all consents, approvals, orders, authorizations or filings with any federal or state governmental agency necessary for the authorization, execution, delivery and performance of this Agreement by the Donee and the consummation of the transactions contemplated herein by the Donee has been taken or obtained, and that this Agreement constitutes the legal, valid and binding obligation of such entity.
- 22. ELECTRONIC SIGNATURE & COPIES.** electronic signatures shall constitute original signatures for all purposes of this Agreement. Any and all electronic copies of the Agreement shall be treated as an original version.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year written above.

Donor:

JBS USA Food Company

By: _____

Name: Christopher Gaddis

Title: Head of Human Resources

Donee:

CITY OF GRAND ISLAND, NEBRASKA,

By _____
Mayor

Date _____

Attest: _____
City Clerk

Attorney for the City

Date _____

EXHIBIT A

Donation Fund Amount:

\$1,000,000

Fund Disbursement Schedule:

Lump sum payment.

Sole Purpose of the Funds:

Expansion of the Grand Island, Nebraska Hike and Bike Trail to the JBS Grand Island Beef Facility as described below, and the construction of the Veteran's Sports Complex Playground in Grand Island, Nebraska.

**Non-monetary Gift (if applicable):**

EXHIBIT B

Benefits:

1. Donee shall grant Donor life-long naming rights of the Grand Island, Nebraska Hike and Bike Trail that connects the existing trail to the JBS Grand Island Beef Facility as described in Exhibit A, which shall last for the duration of that section of the trail and prominently feature the Donor's name and logo. If, at any time, Donor requests an update to the name(s) or logo(s) set forth in Exhibit C and subsequently used in or on the JBS section of the Hike and Bike Trail, Donee shall work with Donor, at Donor's cost, to effectuate such change.
2. Donee shall grant Donor life-long naming rights of the Veteran's Sports Complex Playground as described in Exhibit A, which shall last for the duration of the Veteran's Sports Complex Playground and prominently feature the Donor's name and logo. If, at any time, Donor requests an update to the name(s) or logo(s) set forth in Exhibit C and subsequently used in or on the Veteran's Sports Complex Playground, Donee shall work with Donor, at Donor's cost, to effectuate such change.

EXHIBIT C

Donor Trademarks:



JBS USA Food Company

JBS

EXHIBIT D

Expansion of the Grand Island Hike and Bike Trail to the JBS Grand Island Beef Facility as outlined below in red.

