

**MEMORANDUM  
DEPARTMENT OF FACILITY SERVICES  
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **SEPTEMBER 9, 2008**

From: **JAMES DURFEE / ALBERT RICHIE**

Subject: **USE AGREEMENT WITH THE CITY OF LINCOLN FOR THE McBEAN PARK  
GAZEBO**

**ACTION REQUESTED / RECOMMENDATION:** It is recommended your Board consider the following actions related to the McBean Park Gazebo Project:

1. Approve and execute the attached Agreement from the City of Lincoln for County Park Dedication Fees, in the amount of \$25,000 from Recreation Area #6, City of Lincoln, for the McBean Park Gazebo.
2. Approve a Budget Revision appropriating funds from County Park Dedication Fees for the final phase of construction of a new Gazebo/Bandstand project at McBean Park in Lincoln.

**BACKGROUND:** The City of Lincoln is requesting County Park Dedication Fees to complete the final phase of construction of a new Gazebo/Bandstand project at McBean Park in Lincoln. McBean Park is a 91-acre community park located in the heart of Lincoln.

The gazebo will be used for activities such as picnics, weddings, and outdoor concerts. Users will include youth sports programs, the Police Activity League, schools, and community service organizations such as the Lincoln Rotary Club, the Lincoln Volunteer Center, the Lincoln Arts and the Lions Club.

City staff has worked together with the Lincoln Rotary Club in building the facility in phases. County Park Dedication Fees will fund the final phase of the project, which consists of sidewalks, power, bollards, lighting, trash receptacles, a drinking fountain, drainage improvements and landscaping.

The total cost for the Gazebo/Bandstand facility is close to \$430,000. Funding from the City of Lincoln and community contributions paid for the previous phases of this project.

On October 15, 2007, the Rural Lincoln Municipal Advisory Council voted unanimously to recommend approval of this request; and on April 22, 2008, the Placer County Parks Commission also recommended approval.

**ENVIRONMENTAL CLEARANCE:** Your Board's approval of this funding is an administrative action and is not a project as defined by the California Environmental Quality Act pursuant to Section 15378.

**FISCAL IMPACT:** The current available balance of County Park Dedication Fees in Recreation Area # 6, City of Lincoln is \$98,800. Therefore, approval of this request will have no impact upon the County General Fund.

ATTACHMENT. AGREEMENT  
BUDGET REVISION

CONTRACT NO. \_\_\_\_\_

## AGREEMENT

### AGREEMENT FOR THE McBEAN PARK GAZEBO PROJECT WITH COUNTY FUNDS

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the COUNTY OF PLACER, a political subdivision of the State of California, hereinafter referred to as "COUNTY" and the CITY OF LINCOLN, hereinafter referred to as "CITY" to effect upgrades to the gazebo at McBean Park in Lincoln, California.

#### WITNESSETH:

**WHEREAS**, CITY owns certain real property, more specifically described as McBean Park, located at 61 McBean Park Drive in Lincoln, California; and,

**WHEREAS**, the CITY constructed a new gazebo in Mc Bean Park in 2006; and,

**WHEREAS**, the final stage of construction is ready to begin.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, it is hereby agreed as follows:

1. The CITY shall complete the final phase of the Mc Bean Park Gazebo Project by installing sidewalks, a walkway of donated bricks, power, bollards, lighting, trash receptacles, a drinking fountain, drainage improvements, and landscaping.
2. COUNTY shall provide to CITY Park Dedication Fees in a sum not to exceed Twenty-five Thousand Dollars (\$25,000) for use by the CITY to pay for a portion of the cost to complete the gazebo project. The CITY shall post a sign near the gazebo recognizing that COUNTY funding was used to pay for a portion of the project.

Funds granted shall be solely from funds received by COUNTY and held as Park Dedication Fees. In the event it is determined by the COUNTY that the CITY has utilized funds in a manner that is in violation of any applicable regulation or administrative rule pertaining thereto, and the COUNTY requires repayment of any funds granted to COUNTY, the CITY shall immediately upon request of the COUNTY reimburse the COUNTY for the same.

3. In order to receive funds hereunder, the CITY shall provide the COUNTY with a written request for the release of funds, including copies of receipts of the expenditures for constructed improvements and any other information reasonably required by COUNTY. Funds will be released within 45 days of the County's approval of the request for release of funds from the CITY. The CITY agrees to be subject to any audits of eligible expenditures as may be conducted by the COUNTY.
4. The improvement for which funding is requested hereunder shall be completed no later than October 31, 2010. Upon completion, the CITY agrees that the improvements will be made as available to the general public who reside in the unincorporated areas of the county as they are to the residents of the CITY.
5. All property and/or improvements purchased and/or installed by the CITY pursuant to this agreement shall become the sole and separate property of the CITY as of the time said property and/or improvements are installed.
6. The CITY, at its sole cost and expense shall provide all water, electricity and, utilities, and shall provide all necessary maintenance and repair to the recreational facility during the term of this agreement.

**AGREEMENT FOR THE MCBEAN PARK GAZEBO PROJECT WITH COUNTY FUNDS**

7. The CITY agrees that funds granted to it for the construction of said recreation facilities shall not be used for any purpose not specified in this agreement. The CITY shall keep detailed records in accordance with the requirements of the COUNTY. The COUNTY shall have the right to inspect said records at any reasonable time.
8. The term of this agreement shall be for a period of twenty (20) years commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 2028. Thereafter, this agreement shall extend from year to year. After completion of the improvements by the CITY and release of the grant moneys by the COUNTY, either party may, in its sole discretion and without cause or reason, terminate this Agreement by providing thirty (30) days written notice to the other. If the CITY terminates this Agreement during the twenty (20) year term, the CITY shall reimburse the COUNTY for the actual amount granted by the COUNTY to the CITY, not to exceed amount, as described in Paragraph 2 of this Agreement in accordance with the following schedule:

<u>Years in use</u>	<u>Percent Reimbursed</u>	<u>Years in use</u>	<u>Percent Reimbursed</u>
1	95	11	45
2	90	12	40
3	85	13	35
4	80	14	30
5	75	15	25
6	70	16	20
7	65	17	15
8	60	18	10
9	55	19	5
10	50	20 or more	0

9. All notices to either party that may be required or authorized by this Agreement shall be in writing and either deposited in the United States Mail, postage prepaid or personally delivered. The notice shall be effective upon the date of personal delivery or date of mailing. Notices regarding this agreement shall be sent or delivered to the CITY or COUNTY at:

CITY: Jenny Simpson, Grant Coordinator  
 City of Lincoln  
 600 Sixth Street  
 Lincoln, CA

COUNTY: John Ramirez, Parks Administrator  
 County of Placer, Department of Facility Services  
 Parks and Grounds Division  
 11476 C Avenue  
 Auburn, CA 95603

Either party may amend its address for notice by notifying the other party in writing.

**10. HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The CITY hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court

costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CITY agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CITY. CITY also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CITY or the COUNTY or to enlarge in any way the CITY'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CITY'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

11. INSURANCE:

CITY shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A:VII showing.

12. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CITY'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the County of Placer."

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

13. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CITY, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by CITY in this Agreement.

B. One of the following forms is required:

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- (1) Comprehensive General Liability;
  - (2) Commercial General Liability (Occurrence); or
  - (3) Commercial General Liability (Claims Made).
- C. If CITY carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
- One million dollars (\$1,000,000) each occurrence
  - One million dollars (\$1,000,000) aggregate
- D. If CITY carries a Commercial General Liability (Occurrence) policy:
- (1) The limits of liability shall not be less than:
    - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
    - One million dollars (\$1,000,000) for Products-Completed Operations
    - One million dollars (\$1,000,000) General Aggregate
  - (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).
- E. Special Claims Made Policy Form Provisions:
- CITY shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:
- (1) The limits of liability shall not be less than:
    - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
    - One million dollars (\$1,000,000) aggregate for Products Completed Operations
    - One million dollars (\$1,000,000) General Aggregate
  - (2) The insurance coverage provided by CITY shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

14. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

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- B. "The insurance provided by the CITY, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County of Placer."

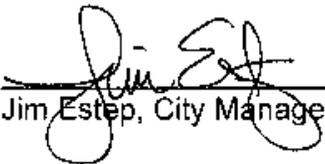
15. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on behalf of the persons duly authorized by the governing boards of the parties hereto.

CITY OF LINCOLN

By:  6-29-08  
 Jim Estep, City Manager Date

APPROVED AS TO FORM:

By:  7-22-08  
 City Counsel Date

PLACER COUNTY

By: \_\_\_\_\_  
 Chairman, Board of Supervisors Date

APPROVED AS TO FORM:

By:  7/7/08  
 County Counsel Date

PAS DOCUMENT NO.  
\_\_\_\_\_

Fund = 399 Subfund = 6 OCA= 780610 PCA=07806 -  
Facility Services to Process Journal

**BUDGET REVISION**

**POST DATE:**

DEPT NO.	OCC TYPE	Total \$ Amount	TOTAL LINES
12	BR	50,000.00	2

- Cash Transfer Required  
 Reserve Cancellation Required  
 Establish Reserve Required

- Auditor-Controller  
 County Executive  
 Board of Supervisors

**ESTIMATED REVENUE ADJUSTMENT**

**APPROPRIATION ADJUSTMENT**

DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT	DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT
12	006		100		997425	97425	8780			25,000.00	12	014		100		997425	97425	2840			25,000.00
<b>TOTAL</b>										25,000.00	<b>TOTAL</b>										25,000.00

REASON FOR REVISION: To appropriate Park Dedication Fees from Area #6 for the Gazebo/Bandstand project at McBean Park in Lincoln.

Prepared by Coree Roeder Ext 6844  
 Department Head Valerie Payne  
 Board of Supervisors \_\_\_\_\_

Date: 8/21/08  
 Page: \_\_\_\_\_

Budget Revision # \_\_\_\_\_ FOR INDIVIDUAL DEPT USE

188  
181

