

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: August 19, 2013

Approved

Date

8/26/13

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF AN AGREEMENT WITH THE ROTARY CLUB OF SAN JOSE, INC. TO DEVELOP A CHILDREN'S PLAYGARDEN IN GUADALUPE RIVER PARK & GARDENS AND APPROVAL OF A FIRST AMENDMENT TO AN AGREEMENT WITH THE GUADALUPE RIVER PARK CONSERVANCY FOR MAINTENANCE OF THE FUTURE CHILDREN'S PLAYGARDEN

RECOMMENDATION

- (a) Approve an Agreement with the Rotary Club of San José, Inc. to fund, design, and construct a 4.5 acre children's playgarden and parking lot in the Guadalupe River Park and Gardens in the City of San José for children of all abilities with a City contribution of up to \$1,400,000 for a total project cost of approximately \$6,000,000, with a term ending on December 31, 2015;
- (b) Adopt a resolution making a finding that requiring the Rotary Club of San José, Inc. to solicit bids and award a construction contract to the lowest responsible bidder for the construction of the 4.5 acres children's playgarden and parking lot in the Guadalupe River Park and Gardens would be an "idle act" pursuant to Section 1217(e)(6) of the City Charter since the Rotary Club of San José, Inc. is funding over \$4,500,000 of the approximate \$6,000,000 project cost through donations and discounted goods, materials and services from its members and the community;
- (c) Adopt a resolution requesting funding for the Project from the County pursuant to Government Code section 25551 in the amount of \$250,000;
- (d) Approve the First Amendment to the Agreement with the Guadalupe River Park Conservancy to maintain the future children's playgarden in the Guadalupe River Park and Gardens at no additional cost to the City and for a term until September 30, 2014, and exercise the City's option to extend to September 30, 2016; and

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- (e) Approve the naming of the proposed 4.5 acres children's playgarden in the Guadalupe River Park and Gardens as the "Rotary Playgarden" to be effective upon completion of the park improvements.

OUTCOME

Approval of the Rotary Club of San José ("Rotary Club") Agreement will enable the Rotary Club to complete its fundraising campaign and, if sufficient funding is secured, proceed with the development and construction of the Rotary Playgarden. Approval of the First Amendment to the Guadalupe River Park Conservancy ("Conservancy") will enable the Conservancy to maintain the Rotary Playgarden at no additional cost to the City at such time as the Rotary Playgarden is completed and accepted by the City.

EXECUTIVE SUMMARY

The Rotary Club wishes to construct an accessible children's playgarden in celebration of its 100-year anniversary in the Guadalupe River Park & Gardens ("Guadalupe Gardens"). The selected site is outside of the "object free zone" required by the Federal Aviation Administration ("FAA") but within the FAA's area of jurisdiction. The Technical Advisory Committee for the Guadalupe Gardens has found the project is in compliance with the Master Plan for the Guadalupe Gardens and the Rotary Club has hired design consultants and proceeded with design of the project.

The estimated cost of the project is \$6,064,020 and the Rotary Club will donate \$4,664,020 and the City will contribute \$1,400,000 towards the project. The City is requesting that Santa Clara County contribute \$250,000 which would be used to offset the total donation by the Rotary Club by the same amount if the request is granted. Given that the Rotary Club will contribute more than 75% of the project cost, the Rotary Club would not be required to engage in the competitive bid process for the construction of the playgarden.

The Guadalupe River Park Conservancy ("Conservancy") helps maintain the Guadalupe Gardens under an agreement with the City and currently receives an annual grant from the City for these and other services. The Conservancy will also support operations and maintenance of the Rotary Playgarden at no additional cost to the City under the terms of the first amendment to their agreement with the City. This action includes naming the facility the "Rotary Playgarden."

BACKGROUND

The Rotary Club is a California non-profit corporation celebrating its 100-year anniversary from March 2013 through March 2014. A number of activities will be scheduled throughout the year with the centerpiece activity being the grand opening of a proposed playgarden for children of all

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abilities in San José. Several sites along the Guadalupe Gardens were evaluated prior to identifying a site adjacent to the Visitor Center at 438 Coleman Avenue as the preferred site. A map of the project area is attached to this memorandum as Attachment A.

The City acquired the Guadalupe Gardens properties using FAA grants for airport approach protection and noise compatibility. As required by the grant agreements, the 2002 Guadalupe Gardens Master Plan ("Master Plan") was submitted to the FAA and approved on August 9, 2002. The FAA is currently performing an audit related to the use of grant funding. While the audit is not final, the FAA auditors have preliminarily determined that the FAA erred in its approval of the Master Plan and that the City is obligated to inventory those parcels acquired by the City with noise compatibility grant proceeds for FAA review and approval of a disposition plan. Based on recent conversations with the FAA, the City believes that the result of their audit will find that the City is not obligated to dispose of the property. However, if the final audit does indicate that the City needs to provide a disposition plan for the project, the City feels that it has strong defenses to the FAA audit determination in that the approval of the Master Plan constituted an official FAA approval of the City's reuse of the parcels acquired with proceeds from FAA noise compatibility grants, and the approval expressly provides that the entire Guadalupe Gardens is necessary for the continuing aeronautical purpose of runway and approach protection. Having received official FAA approval of its reuse of the parcels, the City believes it is under no obligation to take any further action to secure further FAA approval of its continuing use of the Guadalupe Gardens.

The selected site is outside of the "object free zone" required by the FAA but within the FAA's area of jurisdiction. The Master Plan, which received environmental clearance on April 23, 2002, calls for improving the aesthetic appearance and public use of the City property bounded by I-880, Coleman Avenue, and the Guadalupe River while maintaining compliance with Airport and FAA open space requirements. Under the Master Plan, land uses south of Taylor Street, including the preferred site for the proposed children's playgarden, should primarily consist of varietal thematic gardens such as a specialty flower garden, ornamental grass garden, desert plant garden, cloud garden, dwarf plant garden, herb or medicinal plant garden, children's discovery or youth gardens, and ethnic heritage gardens.

The Guadalupe Gardens Technical Committee was developed as part of the Master Plan to oversee proposed projects to ensure that improvements located within Guadalupe Gardens are programmed, designed, constructed, and maintained in a manner consistent with the Master Plan. The Technical Committee, which consists of representatives from the Airport, Department of Parks Recreation and Neighborhood Services (PRNS), Department of Transportation, and Guadalupe River Park Conservancy, is designated with the authority to review proposed projects and make determinations of consistency with the Master Plan. The Technical Committee reviewed the proposed project and made a determination on October 17, 2012, that the children's playgarden conceptual proposal presented by the Rotary Club is consistent with the Master Plan.

On March 9, 2010, City Council approved a partnership with the Rotary Club to develop a children's playgarden in Guadalupe Gardens and to work with the Rotary Club and Conservancy

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to identify a source of funding for on-going operations and maintenance of the playgarden. City Council also authorized the Director of PRNS to negotiate an agreement for City Council consideration. The City currently provides minimal services to the project area shown in Attachment A to maintain the turf, irrigation system, and trees, and cannot absorb the high level of service needed to operate and maintain the proposed playgarden. The Conservancy wishes to support operations and maintenance of the portion of the project area that will be improved for the playgarden because it furthers the Conservancy's mission for development and active use of the Guadalupe Gardens.

Since 2010, the Rotary Club has hired a landscape architectural firm, hosted a community meeting, developed a conceptual plan for the children's playgarden, commissioned an independent cost estimate, and hired a fund raising consultant. An Addendum to the Mitigated Negative Declaration was approved on April 29, 2011 to allow construction of the proposed children's playgarden based on the conceptual plan. On June 6, 2012, the Parks and Recreation Commission ("Commission") reviewed the playgarden's conceptual plan and expressed support for the project. On December 5, 2012, the Commission held a public hearing about the proposed name of the project and recommended City Council approval of the name "Rotary Playgarden."

On May 15, 2012, the City entered into a three year agreement with option for a two year extension with the Conservancy for maintenance support of the Guadalupe Gardens. In coordination with City staff, Conservancy volunteers provide basic grounds maintenance services consisting of litter collection, weeding, pruning, minor irrigation, and planting bed repair in the Historic Orchard, Heritage Rose Garden and Courtyard Gardens. The Conservancy also develops and administers educational and outreach programs, such as gardening with recycled water, and special events, such as Pumpkins in the Park, that draw people into the Guadalupe Gardens to use and enjoy its resources. The Conservancy currently receives an annual grant of \$50,487 from the City for these services and wishes to support operations and maintenance of the Rotary Playgarden at no additional cost to the City. This First Amendment to the agreement with the Conservancy adds the future Rotary Playgarden to the list of gardens within Guadalupe Gardens to be maintained by the Conservancy.

ANALYSIS

Rotary Club Agreement

The Rotary Club is interested in designing and constructing the Rotary Playgarden in Guadalupe Gardens to celebrate its 100 year anniversary. The estimated cost of the project is \$6,064,020. Rotary Club will donate \$4,664,020 in paid, discounted and donated in-kind services, and the City will contribute up to \$1,400,000 towards the City's design review and construction inspection cost, security bonds and construction of the parking lot, the Autumn Street access road, and restroom facility. If there are any funds remaining from the City's contribution, the Director of PRNS may approve in writing for such funds to be used to pay for additional recreational elements. Rotary Club shall provide the City, on a monthly basis, with an itemized cost and expense report and other documents reasonably required by the City to verify the

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amount Rotary Club expended (including credit for donated materials and in-kind contributions) for the eligible recreational improvements. This agreement would automatically expire on December 31, 2015, except for certain provisions that survive, unless earlier terminated.

Given that the Rotary Club will contribute more than 75% of the project cost and will secure volunteers, donated in-kind services, and discounted goods and services from its members and others in the community, staff believes it would be an "idle act" to require the Rotary Club to engage in the competitive bid process for the construction of the playgarden. Based on Section 1217(e)(6) of the City Charter, an exception to the competitive bid requirements is allowable for a "public works project," as that term is defined in the City Charter, "where solicitation of bids would for any reason be an idle act." As part of this memorandum, staff is requesting that Council adopt a resolution finding that it would be an "idle act" to require the Rotary Club to solicit bids and award a construction contract to the lowest responsible bidder since Rotary Club will fund over 75% of the project cost through paid, donations, and discounted goods, materials, and services.

Additionally, the County of Santa Clara ("County") has indicated that it might be able to participate in funding a portion of the project. As part of this memorandum staff also requests that the Council adopt a resolution requesting funding for the project from the County pursuant to Government Code section 25551 in the amount of \$250,000. If the Council adopts the resolution by a 4/5ths vote, then the resolution will be presented to the County Board of Supervisors who will determine whether to grant the requested aid. If the City receives funds from the County, those funds will replace a portion of the Rotary Club funding contribution of the project. Staff will bring forward the associated budget actions to recognize the funds and appropriate it at a later date once it is known if the County will provide funding for the project.

The Rotary Playgarden will include natural features, play structures and creative opportunities for play in a specially designed physical setting. The goal is to enable children of all abilities to engage and play equally, and to enable parents and caregivers with disabilities to play with their children. The project design components are depicted in Attachment B. The Rotary Playgarden conceptually includes an amphitheater, turbines/kinetic art, tunnel with bridge, cattail and tule fence, swing area, climbing net structures, spinning and rocking play equipment, restroom facility, water edge estuary, traffic signal for Coleman Avenue, parking lot and other necessary sidewalks, signage, picnic facilities, landscaping, and irrigation to provide a functional park. The Rotary Club may propose changes to the project with prior approval in writing by the City during the development of construction specifications.

Prior to the City issuing a Notice to Proceed for the construction of the Recreational improvements under this Agreement, Rotary Club shall provide to the City for review and approval the supporting bank documents and written pledges of cash and/or donated services demonstrating that the Rotary Club has secured the funding of \$4,664,020 to complete the Recreational Improvements. If Rotary Club is unable to secure the full funding, the City will not issue a Notice to Proceed. The Rotary Club or its contractors will be required to provide standard insurance and bonds for the project.

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City responsibilities may include submitting conceptual design to the FAA for comments, review of conceptual design and construction documentation, construction inspection, and coordination with Airport and other City departments in support of the project schedule. The City's funding contribution of up to \$1,400,000 will be used to cover the City's review and inspection services fee of \$407,020.

Conservancy Amendment

The Conservancy agrees to be responsible for grounds maintenance services and minor capital repairs for any portion of the Rotary Playgarden constructed by the Rotary Club upon acceptance of the improvements by the City. The City will continue to maintain any undeveloped portions of the project area. The City will be responsible for repair of any valves, main lines or lateral lines; emergency tree trimming or removal; and quarterly Rotary Playgarden inspections.

The Conservancy will be responsible for all day-to-day maintenance and operation of the future Rotary Playgarden including: daily inspection and safety assessments; trash removal; graffiti removal; turf maintenance and fertilizing; tree and shrubbery maintenance; application of organic herbicides; hardscape cleaning; vector control; and restroom maintenance.

Summary

Staff recommends Council approves the proposed agreement with the Rotary Club to fund, design, and construct a Rotary Playgarden for children of all abilities in the Guadalupe Gardens, and approve the name "Rotary Playgarden" for this Guadalupe Gardens amenity.

The Rotary Playgarden will have no impact on the General Fund operating budget for the term of the Conservancy agreement because the Conservancy will provide ongoing maintenance of the new amenities during that time. However, the City will have to take over maintenance in the event the Conservancy fails to do so or at such time the Agreement terminates. Therefore, staff further recommends concurrent approval by the City Council of the First Amendment and the first option to extend the amendment to September 2016, to the Conservancy Agreement for support of the Guadalupe Gardens at no additional cost to the City. This project aligns with the PRNS strategy to reduce costs for turf maintenance and find alternative maintenance delivery providers.

Both the construction and maintenance of the playgarden will be subject to prevailing wage, with the exception of volunteers who are unpaid and meet the definition of Labor Code Section 1720.4. The Rotary Playgarden may also include monuments, plaques, or markers in recognition of the Rotary Club or its donors for the extraordinary contribution provided by the Rotary Club to the City and community under this Agreement. Any monuments, plaques, or markers in recognition of the Rotary Club or its donors to be constructed as part of this Agreement shall follow applicable City policies for approval, including Council Policy 1-17 (Donation, Sponsorship, and Fundraising Policy), Council Policy 9-14 (Monument Policy), and Council Policy 7-5 (Naming of City-Owned Land and Facility).

EVALUATION AND FOLLOW-UP

The construction contract will be awarded by the Rotary Club so there will be no further follow-up to City Council on this project unless the County contributes funding to the project. Should that occur, any necessary budget actions will be brought forward and any agreement necessary to accept the funding.

POLICY ALTERNATIVES

Alternative #1: Do not approve Rotary agreement and Conservancy amendment

Pros: If the Agreement is not approved, the City will save the \$1,400,000 contribution for some future project in Council District 3.

Cons: If the Agreement is not approved, a partnership toward funding and implementing a capital improvement project will not be realized. The playgarden amenity will not be built and the City will have lost an opportunity to reduce turf maintenance costs.

Reason for not recommending: A playgarden in Guadalupe River Park & Gardens would be a valuable amenity to the community and is an element of the Master Plan. The proposed Rotary Playgarden will provide a unique facility for San José and provide recreational pleasure for children and parents of all abilities. The Conservancy's maintenance agreement means the City will have no additional cost to maintain the Rotary Playgarden unless the City needs to take over maintenance in the event the Conservancy fails to do so or at such time the Agreement terminates.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This Project meets Criterion 1: Requires Council action on the use of public funds equal to \$1,000,000 or greater. A public meeting was held on August 18, 2010, to obtain community input on the playgarden design. In addition, this memo will be posted online for the September 10, 2013, Council agenda.

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COORDINATION

This memorandum has been coordinated with the Airport Department, City Attorney's Office, City Manager's Budget Office and the Department of Planning, Building and Code Enforcement.

FISCAL/POLICY ALIGNMENT

This Project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy, and the PRNS strategy to reduce costs for turf maintenance and find alternative maintenance delivery providers.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Construction	\$5,374,150
Construction Contingency	282,850
Project Delivery	<u>407,020</u>
TOTAL PROJECT COST	\$6,064,020

2. SOURCE OF FUNDING:

375 – Subdivision Park Trust Fund	\$1,400,000
Rotary Club Contribution*	<u>\$4,664,020</u>
TOTAL SOURCE OF FUNDING	\$6,064,020

*This line item includes a potential County contribution of \$250,000 which may be used to offset the Rotary Club's contribution. The County's contribution would be received by the City while contributions that come from the Rotary Club will not be transferred to the City. The funds contributed by the Rotary Club will remain in their bank account and used to offset the cost of the project.

3. OPERATING COST: Approval of the recommendation should have no significant adverse impact on the General Fund operating budget. Routine maintenance of the Rotary Playgarden will be handled by the Guadalupe River Park Conservancy ("Conservancy"), as stated in Amendment One of the Conservancy's Agreement. In the event the Conservancy fails to provide maintenance, the estimate cost to the General Fund to maintain the area would be approximately \$45,800 annually.

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BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	Proposed Capital 2013-14 Budget Page*	Last Budget Action (Date, Ord. No.)
391	7531	Guadalupe River Park Rotary Playgarden	\$175,000	\$175,000	V - 453	06/18/2013 Ord. No. 29271
375	7298	Guadalupe River Park and Gardens Improvements (Rotary Club)	0**	\$1,225,000	N/A	N/A
Total Funding Available				\$1,400,000		

* The 2013-2014 Adopted Capital Budget and the 2014-2018 Adopted Capital Improvement Program was approved by the City Council on June 18, 2013

** A balance of \$1,225,000 remains in 2012-2013. These funds will be recommended to be rebudgeted as part of the 2012-2013 Annual Report to be published at the end of September 2013 and would be available for use in October. The Rotary Club is in the process of securing the entire funding for this project and the earliest that this project would begin is in 2014.

CEQA

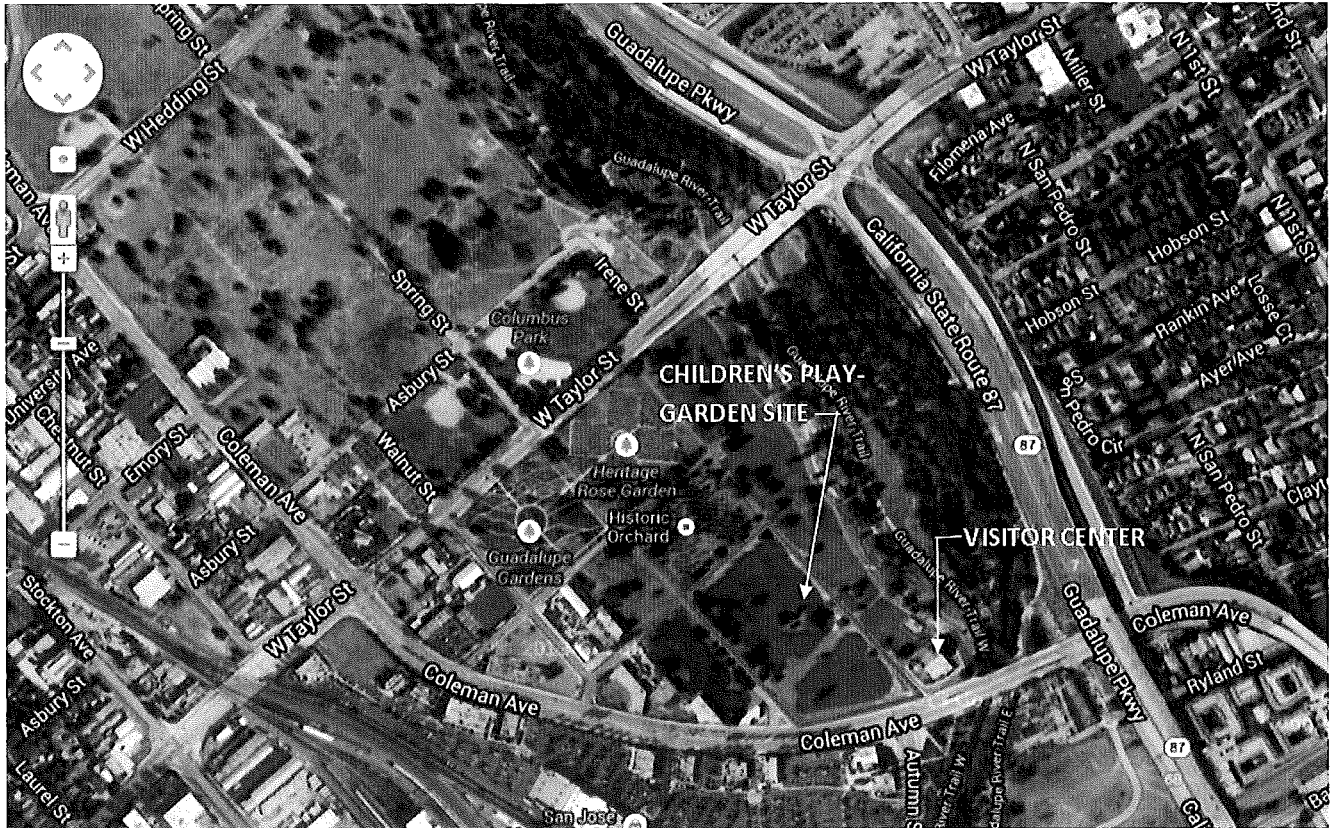
Exempt, File No. PP11-032.

/s/
JULIE EDMONDS-MARES
Director of Parks, Recreation and
Neighborhood Services

For questions please contact Marybeth Harasz, Division Manager, at 408-793-5144.

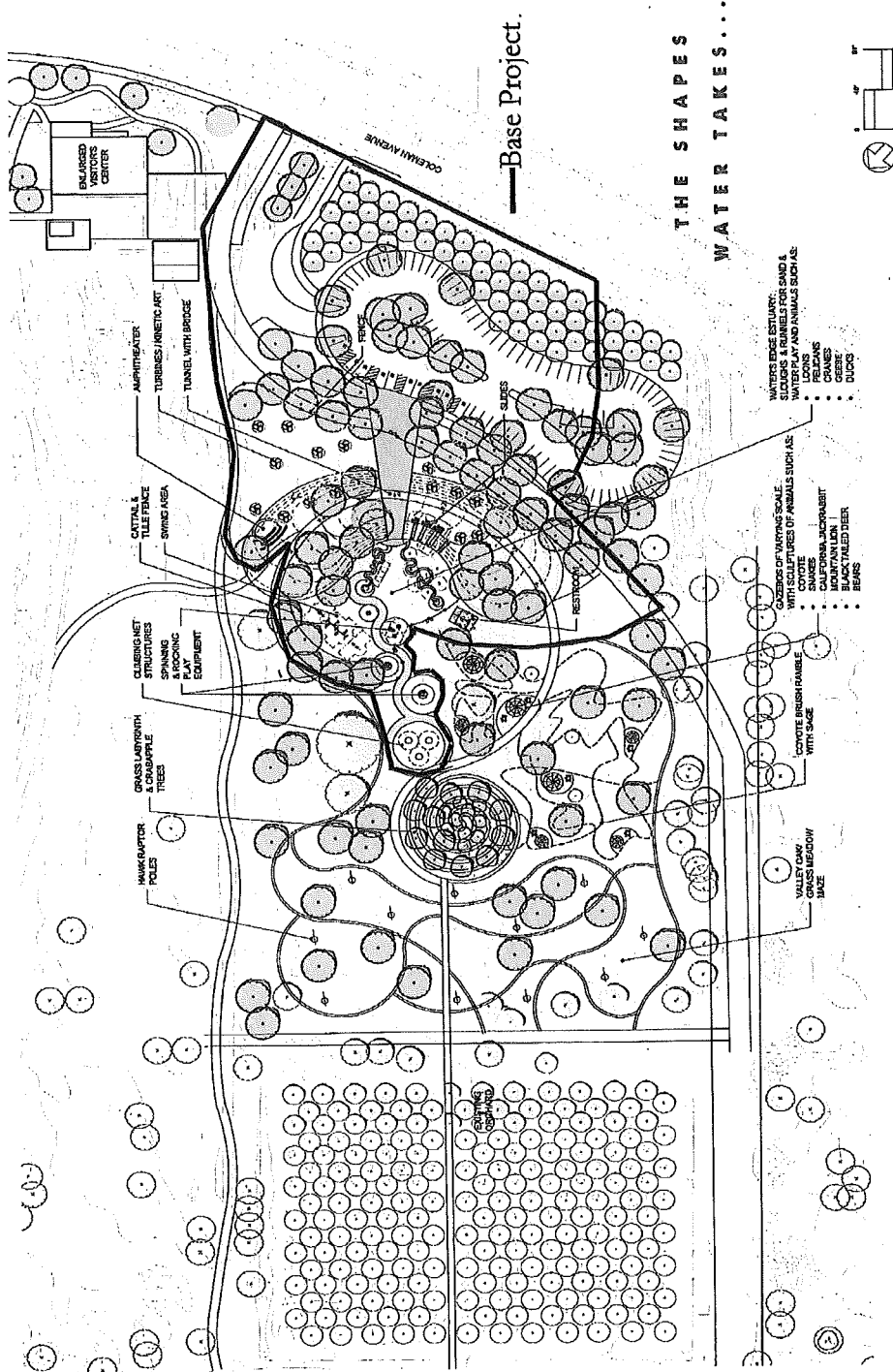
Attachment A: Site Location Map
Attachment B: Conceptual Design

ATTACHMENT A



SITE LOCATION MAP

ATTACHMENT B



Rotary Playgarden

OCTOBER 2010

