

CITY OF HIGH POINT

AGENDA ITEM



Title: Grant of Easement from City of High Point to Qubein Children's Museum

From: Greg Ferguson, Assistant City Manager

Meeting Date: June 22, 2020

Public Hearing: NA

**Advertising Date /
Advertised By:** NA

Attachments: Grant of Easement

PURPOSE:

The City Staff has worked with the Qubein Children's Museum to identify shared parking opportunities at the Culler Senior Center, as well as the most efficient means of providing solid waste service to the two facilities.

BACKGROUND:

The City Staff has identified 11 parking spaces at the Culler Senior Center that can be designated for use of the Museum to assist in meeting parking requirements for the Museum site. In addition, it is desired to share the dumpster currently located at the Senior Center for both facilities.

The Museum will maintain the Dumpster Pad as part of the Grant of Easement.

BUDGET IMPACT:

N/A

RECOMMENDATION / ACTION REQUESTED:

City Council is requested to approve the Grant of Easement as presented in the attachment and authorized signature.

DRAWN BY: JoAnne L. Carlyle, City Attorney
RETURN TO: City Attorney, P.O. Box 230, High Point, NC 27261

NORTH CAROLINA

GUILFORD COUNTY

GRANT OF EASEMENT

THIS GRANT OF EASEMENT made this ____ day of _____, 2020, between **THE CITY OF HIGH POINT**, a municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina, 27260, existing under the laws of the State of North Carolina (the “City”) and **NIDO & MARIANA QUBEIN CHILDREN’S MUSEUM**, a North Carolina nonprofit corporation located at _____ (the “Museum”).

W I T N E S S E T H

WHEREAS, the Museum is planning to build and operate a Children’s Museum on its property located at the southeast intersection of North Hamilton Street and Montlieu Avenue in the City of High Point, North Carolina, which property has an address of 200 Montlieu Avenue, High Point, North Carolina, and is described in those deeds recorded in Book 8214, Page 109, and Book 8125, Page 1104, Guilford County Registry (the “Museum Property”);

WHEREAS, the City owns that certain tract of land described as Tract 1 in that deed recorded in Book 3672, Page 1215, Guilford County Registry, which tract is adjacent to the south line of the Museum Property, and has frontage on North Hamilton Street (the “City Property”);

WHEREAS, in developing its architectural site plan for the Children’s Museum, the Museum found that it needed an additional eleven (11) parking spaces and some additional land on which to locate a dumpster pad for a garbage receptacle serving the proposed Children’s Museum (the “Dumpster Pad”);

WHEREAS, the City Property is currently improved with a parking lot which serves the Roy B. Culler, Jr. Senior Center;

WHEREAS, the Museum has requested that the City allow it to have use of the eleven parking spaces located on the City Property directly adjacent to the southerly line of the Museum Property as shown on Exhibit A (the “Shared Parking Spaces”), and to locate a portion of the Dumpster Pad on a portion of the City Property in the location shown on Exhibit A; and

WHEREAS, the City has agreed to the Museum’s request under the terms and conditions herein set forth; and

WHEREAS, the Museum has paid to the City the sum of \$150.00, which contributes to the administrative costs of the City.

NOW, THEREFORE, in consideration of the premises and \$150.00 hand paid, receipt of which is hereby acknowledged, and other consideration, the City and Museum hereby covenant and agree that:

1. The City, for itself and its successors and assigns, hereby grants permission to the Museum, its successors and assigns, to install, use, repair, replace, and maintain the Dumpster Pad in the location shown on Exhibit A attached hereto, subject to the terms and conditions set forth herein. The City, for itself and its successors and assigns, hereby grants and conveys to the Museum, its successors and assigns, a non-exclusive, perpetual easement for the use of the Shared Parking Spaces by the Museum’s employees, guests, and invitees, and for ingress, egress, and regress from North Hamilton Street across the parking lot located on the City Property to the Shared Parking Spaces and the Dumpster Pad.

2. The Museum is responsible for:

- (a) any and all expenditure of labor or materials required in the installation, use, erection, repair, replacement, maintenance or location of the Dumpster Pad; and
- (b) any and all labor or expense which results from any and all future maintenance and repair of the Dumpster Pad, and the removal or dismantling of the Dumpster Pad if and when the Dumpster Pad is removed; and
- (c) any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the Museum, its agents, employees, contractors or subcontractors in connection with the Dumpster Pad, or any cause of action arising out of the installation, maintenance, or location of said Dumpster Pad or any other cause of action arising out of the installation, maintenance, or location of said Dumpster Pad (collectively, “Claims and Causes of Action”), unless such claims and causes of action are the result of the negligence of the City, its employees, contractors, guests, or invitees.

3. The Museum agrees:

- (a) to hold the City, its officers, agents and employees harmless from any and all liability arising out of any such Claims and Causes of Action, and

- (b) to defend the City, its officers, councilors and employees and pay all attorney fees in any and all actions brought as a result of such Claims and Causes of Action; and
- (c) to indemnify the City, its officers, agents and employees against any and all loss sustained by reason of such Claims and Causes of Action.

4. The Museum shall keep the dumpster secure at all times, and shall maintain it and the Dumpster Pad in good order and repair, including the prompt repair of any damage to the City's parking lot caused by the Museum, its employees and contractors during construction, maintenance or repair of the Dumpster Pad. The dumpster itself shall be located in a screened and gated enclosure.

5. The Museum shall provide any necessary signage and parking lot re-striping necessary to keep and maintain unimpeded access to the dumpster pad and dumpster for garbage collection vehicles, with such signage and parking lot re-striping to be subject to City's prior approval.

6. The Museum, upon completion of the installation of the Dumpster Pad, shall submit to the City revised drawings in the form of an AutoCad (.dwg) file for retention by the City if the actual installation differs significantly from the installation shown on the Exhibit A (in such event, the Museum shall secure approval of the City prior to the differing installation).

7. The Museum, during the life of this agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance in the minimum amounts of One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, combined single limit for personal injury, property damage, or wrongful death resulting from the use of the City Property pursuant to this agreement, including any construction, maintenance, or repairs made pursuant to this agreement, with the City of High Point being included as additional insured as respects work under this Agreement. Museum shall furnish the City upon the City's request, but no more than once in any 12 month period, a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. Museum shall give the City at least 30 days advanced written notice of any cancellation of any required coverage that is not replaced. Should Museum fail to pay premiums upon said insurance, or should Museum fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained; the City at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Museum shall thereupon terminate, except the Museum shall still be responsible for removing the Dumpster Pad from the City Property.

8. The Museum agrees to abide by all applicable laws, regulations, statutes and ordinances governing construction and use of the Dumpster Pad and use of the Shared Parking Spaces as contemplated herein.

9. This Agreement shall not divest the City of any rights or interest in the City Property.

10. The Museum shall contact "NC One Call Center" prior to excavation where and in the manner required by the NC One Call law.

11. This Agreement shall be binding upon and enure to the benefit of all of the parties hereto and their heirs, personal representatives, grantees, successors, and assigns.

20. All matters relating to this Agreement shall be governed by laws of the State of North Carolina without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Guilford County Superior Court or the United States District Court for the Middle District of North Carolina.

12. All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

If to City:
City of High Point
Planning & Development Department
P.O. Box 230
High Point, NC 27261
ATTN: Planning Director

If to Museum:
Nido and Mariana Qubein Children's Museum
c/o Barry Kitley
One University Parkway
High Point, NC 27268

IN WITNESS WHEREOF, the Museum has caused this instrument to be signed by its duly authorized representative as of the day and year first above written.

**NIDO & MARIANA QUBEIN CHILDREN'S
MUSEUM**, a North Carolina nonprofit corporation

By: _____

Print Name: _____

Title: _____

STATE OF _____

_____ COUNTY

I, _____, a Notary Public of the County and State, do hereby certify that _____, personally came before me this day and acknowledged that he/she is _____, and that he/she, as _____ being authorized to do so, executed the foregoing on behalf of the Museum.

Witness my hand and official stamp or seal, this the ____ day of _____, 2020.

My commission Expires: _____

Notary Public

IN WITNESS WHEREOF, the City of High Point has caused this instrument to be signed by its City Manager and attested by its Clerk and its seal to be affixed by the duly-granted authority of its City Council, the day and year first above written.

CITY OF HIGH POINT

By: _____
Jay Wagner, City of High Point Mayor

ATTEST:

SEAL

Lisa B. Vierling, City Clerk

NORTH CAROLINA

GUILFORD COUNTY

I, _____, a Notary Public of said county and state do hereby certify that Lisa B. Vierling is known to me as City Clerk of the City of High Point; that she personally appeared before me this date; and, that by authority duly given, and as the act of the said City of High Point, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal, and attested by herself as its clerk.

Witness my hand and official stamp or seal, this the ____ day of _____, 2020.

My commission Expires: _____

Notary Public

EXHIBIT A

Shared Parking Spaces and Dumpster Pad

[See attached.]

[Note to Draft: Map attached to this document should label the specific 11 parking spaces as “Shared Parking Spaces”, and label the “Dumpster Pad”. Also need the following language: “This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.”]

