

AGREEMENT BETWEEN THE CITY OF WOODLAND AND THE ROTARY FOUNDATION OF WOODLAND FOR DEVELOPMENT OF SPORTS/ATHLETIC FIELDS AND FACILITIES ON CITY PARK LAND GENERALLY KNOWN AS "SCOTT HILL"

AN AGREEMENT between the City of Woodland (hereinafter the "City"), a Washington non-charter code city, whose address is 230 Davidson Avenue, P.O. Box 9, Woodland, Washington 98674, and, the Rotary Foundation of Woodland (hereinafter the "Rotary Foundation"), a non-profit service organization, for purposes of financing and construction of sports/athletic fields and facilities (hereinafter the "Facilities") on real property on Scott Hill recently acquired and owned by the City (hereinafter the "Park").

WHEREAS, the City is the owner of real property, a legal description of which is attached hereto and incorporated by reference herein as Exhibit A;

WHEREAS, the Park, when developed, will be a valuable recreational resource for the community; and that the development of the Facilities has been designated as a priority by the City and the City's Park Board;

WHEREAS, the City, as part of its park and recreational planning process, and as part of its final projects has found that the community's best interest would be served by seeing that improvements to the Park are constructed by community non-profit services as soon as practical;

WHEREAS, after purchase of the real property, the City does not have the short-term financial ability and cannot project the long-term financial ability, absent community contributions, to fund the design and development of the sports/athletic fields and facilities;

WHEREAS, the Rotary Foundation is a qualified service organization under RCW 35.21.278 and, as part of its community mission, is dedicated to assisting the City in the design and construction of the Facilities;

WHEREAS, the Rotary Foundation is willing to sponsor fund-raising drives and solicit charitable contributions for the project and contribute financial and other resources to the City [such as volunteer and in-kind donations] for the design and development of the Facilities at the Park;

WHEREAS, Washington law, specifically RCW 35.21.278, grants municipalities the legal authority to enter into contracts with local service organizations to facilitate park and recreational development without regard to competitive bidding and RCW 39.36 authorizes municipalities to enter into interlocal agreements for management, development, design, construction and construction oversight of the Facilities;

AND, WHEREAS, the City is willing to accept the financial and other resources offered by the Rotary Foundation for the design and development of sports/athletic fields in the Park and the Rotary is willing to accept the contractual and legal parameters set forth in this agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and performed by the parties hereto, it is hereby agreed as follows:

1. **Purpose.** The purpose of this Agreement is to define the responsibilities of the City and the Rotary Foundation in the development of sports/athletic fields and facilities in the Park and to provide for effective cooperation in the implementation of the provisions set forth herein. Both parties understand the necessity of frequent communication and agree to take the steps necessary to insure that regular communication occurs. Additional written agreements can be used on particular facets of the project (e.g., concession stand, etc.) when practical or as part of project phasing.
2. **Definition of Construction.** That time, during which contractors, subcontractors, or volunteers are on site, providing goods and/or services to further the completion of the project.
3. **Obligations of the Parties.**

CITY OBLIGATIONS

- A. The City, by and through its Parks Board and designees, shall make advisers available to the Rotary Foundation for development of the Park;
- B. The City shall assume the obligation to maintain and repair the Facilities upon acceptance and completion, either directly or through effective oversight of a responsible third party;
- C. The City shall respond in a timely manner to questions and concerns of the Rotary Foundation;
- D. Notwithstanding the above, the City shall not assume any responsibility for construction or for funding of the improvements or equipment initiated by Rotary Foundation, except that in the event that certain types of funding may be available only to the City, for example in the form of grants to municipal entities, the City may agree to apply for such funding.
- E. If public funds are obtained for the construction of a portion or all of the "Facilities", the City will be responsible for managing and administering those public funds to the extent required by law or the funding source. The City would not be responsible for managing any phases of the project that are not paid for by public funds.
- F. Upon completion of the project the City shall continue to designate Scott Hill Park as a City park and maintain the facility for a minimum of ten (10) years.

ROTARY FOUNDATION OBLIGATIONS

- A. The Rotary Foundation shall perform fund-raising for the development and construction of the Facilities in the Park. The Rotary Foundation will follow Rotary policies, guidelines and directives for fund raising and sponsorships;
- B. The Rotary Foundation shall inform the City regarding the Rotary Foundation's planning and side development of the Facilities. The Rotary Foundation shall choose equipment and materials with an emphasis on low-cost, high-quality, low-maintenance equipment/materials. All work shall meet City of Woodland construction standards. Rotary Foundation shall obtain all necessary permits and approvals as required by law;
- C. The Rotary Foundation shall select the contractor(s) to perform the design and construction of the Facilities;
- D. The Rotary Foundation shall inform and update the City's designated representative or designated public official regarding the design and construction of the Facilities;
- E. The Rotary Foundation shall develop and coordinate fund-raising programs; collection, documentation and fiscal control of donations; provide receipts to donors; implement satisfactory internal financial controls; and adopt a procedure for release of funds for completed work;
- F. The Rotary Foundation shall respond in a timely manner to questions and concerns of the City;
- G. The Rotary Foundation shall be responsible for the construction of the park improvements on Scott Hill. If public funds are used requiring City management for construction of a portion or all of the "Facilities", the Rotary Foundation will approve the design and scope of any work prior to the City beginning the bidding process for any construction;
- H. The Rotary Foundation shall provide quarterly or semi-annual reports to the City Parks Board concerning the status of its efforts and the progress made in fund-raising;
- I. The Rotary Foundation shall transfer to the City or its designee, any ownership interest, whether legal or equitable, in the property, fixtures or equipment Rotary Club has purchased for the Facilities;
- J. The Rotary Foundation shall provide as-built drawings or other construction related documentation to the City prior to the opening of the Facilities for use by the public.

4. **Term.** The term of this Agreement shall commence upon the mutual execution of this Agreement and shall remain in effect unless the Agreement is terminated earlier by either party under Section 23 of this Agreement. The Rotary Foundation shall proceed with their obligations in a timely and diligent manner but shall not have any responsibility for delays caused by others beyond the control of the Association or that were not reasonably foreseeable.

5. **Oversight Administration.** This Agreement shall be administered by the City's Parks Board and by the City Public Works Department or their designee solely for the purpose of

oversight and policy coordination. The Rotary Foundation will retain the independent responsibility to construct, design, and direct the improvements unless The Rotary Foundation obtains public funds which require public oversight of the project. Nothing in this Agreement shall derogate neither from the regulatory authority of the City nor the City's statutory and inherent authority to set standards for park development by resolution or by ordinance.

6. **Time Line/Phasing.** The Parties understand that timeline for completing the Facilities is subject to a number of variables which are outside the control of the parties [e.g., success in fund-raising]. Nevertheless, the parties agree that at the earliest opportunity they will draft a general, informal time-line based on a five-year target completion date. Likewise, after fund-raising results are known, the parties agree to re-evaluate the scope of the project and determine whether the Facilities must be constructed in phases. Phasing may become necessary should grants from other government entities require that the Rotary Foundation be responsible for design and construction of a specific part of the project.

7. **Acting Independently From the City.** The Rotary Foundation and the City understand and expressly agree that the Rotary Foundation is acting independently from the City in the performance of each and every part of this Agreement. The Rotary Foundation assumes the entire responsibility for carrying out and accomplishing the work/services required under this Agreement. The Rotary Foundation shall have the sole judgment of the means, mode or manner of the actual performance of work/services required under this Agreement. Additionally, and as an independent contractor, the Rotary Foundation and their employees shall make no claim of City employment nor shall claim against the City and any related employment benefits, social security, and/or retirement. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the Rotary Foundation and/or any officer, employee or agent of the Rotary Foundation and the City. The Rotary Foundation shall obtain whatever licenses or bonds required by law to perform its obligations under this Agreement.

8. **Parameters on Naming Rights.** The parties acknowledge that fund-raising efforts can be maximized when contributors can acquire "naming rights" to amenities or equipment paid for through their financial contribution. To facilitate such fund-raising, the City agrees that Rotary Foundation may represent that a person making a significant financial contribution may request that the amenity or equipment purchased with the contribution will have a memoriam or honorarium of the contributor's choosing, subject to the City's approval, which will not be unreasonably withheld.

9. **No Third Party Rights.** This Agreement is entered into for the sole benefit of the parties. It shall confer no benefits or rights, direct or indirect, on any third parties. No person or entity other than the City and the Rotary Foundation may rely upon or enforce any provision of this Agreement. The City shall have no obligation to replace or to repair tools, machinery or equipment lost, damaged or stolen used by Rotary Foundation or its members, contractors, agents, assigns, contributors or volunteers. The City shall not be a guarantor or surety of any Rotary Club obligation.

10. **Qualifications of Contractors and Subcontractors.** Rotary Foundation agrees to retain contractors and subcontractors who are qualified to perform the work. At a minimum, a "qualified" party will be licensed for the work to be performed, be bonded and have insurance insuring the work done, even when the work performed is an "in-kind" contribution. Volunteers shall be supervised by contractors meeting the requirements of this paragraph.

11. Assignability of Warranties. The work shall be warranted that all materials, equipment, and/or services provided under this contract shall be fit for the purposes for which intended, for merchantability, and shall conform to the requirements and specifications. Rotary Foundation shall obtain a written agreement from contractors, subcontractors, equipment and material providers that all warranties on the work or materials is assignable to the City or its successor or assigns.

12. License to Enter Property. The City grants Rotary Foundation a non-exclusive, revocable license to enter the Park for the purpose of design and construction. Fund-raising events held at the Park will require a supplemental license. The license is not assignable but shall apply to contractors and volunteers who have entered and remain upon the property for the sole purpose of performing work on the project. The license is not a lease and is not intended to create either a legal or equitable interest in the real property. Rotary Foundation shall notify the City of any injury or other claim event within 5 days of its occurrence or within 5 days of when Rotary Foundation has notice. The failure of the City to insist on the performance of any of the terms and conditions of this license, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as waiving either the terms and conditions of the license or the breach.

13. Indemnification and Hold Harmless.

A. Each party hereto agrees to maintain responsibility and assume liability in the performance of this Agreement for its own wrongful and/or negligent acts or omissions, and those of its officers, agents or employees to the fullest extent allowed by law;

B. Rotary Foundation shall assume all liability for and shall indemnify and save harmless the City of Woodland, and its officers and employees from all damages and liability for injury to any person or persons, and injury to or destruction of property, including the loss of use thereof, by reason of an accident or occurrence arising from operations under the contract, whether such operations are performed by Rotary Foundation or by any subcontractor or by anyone directly or indirectly employed by either of them occurring on or about the premises, or the ways and means adjacent;

C. All contractors and subcontractors shall warrant that all materials, equipment, and/or services provided under this contract shall be fit for the purposes for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by the City shall not alter or affect the obligations of contractors and subcontractors or the rights of the City;

D. Notwithstanding any provision herein, Rotary Foundation shall not be liable to the City for property damage to the park caused by the fault of any contractors, subcontractors, or persons not employed by the Rotary Foundation, provided contractors and subcontractors maintain commercially adequate insurance coverage;

E. Nothing contained in this section or this Agreement shall create a liability or a right of indemnification in any third party;

F. Rotary Foundation shall require contractors and subcontractors to waive immunity under Title 51 RCW to the extent required to indemnify, defend and save harmless the City and its agencies, officers or employees. To satisfy statutory requirements, any agreement with a

contractor or subcontractor shall include this provision and shall be mutually negotiated by the parties.

14. Assignment. Rotary Foundation may not assign this Agreement. The City may assign this Agreement to a special purpose district by interlocal agreement.

15. Nondiscrimination. During the performance of this Agreement, the Parties shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, and any other classification protected under federal, state, or local law.

16. Compliance with Law. The Parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement including the laws applicable to building construction and accessibility for the disabled. Likewise, in the event, either the facts, the law or an interpretation of the law triggers the application of public bidding and associated public works statutes including prevailing wage to this project, then the parties agree to take the steps necessary to comply with such law and regulations.

17. Compliance with Public Records Laws. Given the short period of time allowed cities to respond to public records requests, the Rotary Foundation agrees to promptly comply with public records requested by the City pertaining to the project, but the Rotary Foundation retains the right to seek a limiting order from a court to prevent release of information not subject to public records laws. In the event, in the opinion of either party, there is a material change in Washington law affecting the project; the parties reserve the right to cancel or to amend this Agreement.

18. Insurance.

A. Rotary Foundation understands the City does not maintain liability or other insurance for the Rotary Foundation or its employees, contractors, subcontractors and volunteers;

B. Rotary Foundation shall maintain commercial general liability insurance and motor vehicle liability insurance with limits approved by the City but not less than \$500,000 naming the City of Woodland, its officials, employees, agents, successors and assigns as additional insureds on an ISO Form and for limits without restrictive endorsements approved by the City.

C. Rotary Foundation shall also obtain a builder's risk policy with no co-insurance requirement and an architectural/design naming the City of Woodland, its officials, employees, agents, successors and assigns as additional insureds on an ISO Form and for limits approved by the City.

D. The insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days written notice has been received by the City, transmitted by certified mail, return receipt requested. Any contractor hired by Rotary Foundation shall include subcontractors as insureds under the Contractors' policies and provide proof.

19. **Waiver of Breach.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.
20. **Dispute Resolution.** In order to resolve in a timely manner any disputes through cooperation and negotiation, the City and the Rotary Foundation shall meet to discuss any outstanding issues related to the development of the Facilities and the implementation and interpretation of this Agreement. In the event the issues cannot be resolved in this manner, the parties agree to engage a mediator.
21. **Integration.** This Agreement contains all of the terms and conditions agreed on by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, are deemed to exist or to bind either of the parties.
22. **Modifications.** The parties may modify this Agreement but no proposed changes or modifications shall have validity or become binding on either party unless such changes or modifications are in writing and executed by both parties.
23. **Severability.**
- A. If a court of competent jurisdiction holds any part, term or provision of this Agreement illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held invalid.
- B. If any provision of this Agreement is in conflict with any statute or regulation of the State of Washington, that provision which may be in conflict shall by mutual written agreement be deemed inoperative and null and void to the extent it may conflict, and shall be modified to conform to such statute or regulation.
24. **Termination.** Either party may terminate this Agreement, with or without cause, by written notice from either party to the other party six (6) months in advance of the termination.
25. **Survival.** Any provision of this Agreement which imposes an obligation after expiration or termination of this Agreement shall survive the expiration or termination and shall bind the parties.
26. **Notices.** Unless otherwise stated herein, all notices and demands are required in written form and sent to the parties at their addresses as follows:

TO: CITY OF WOODLAND

William A. Finn, Mayor
230 Davidson Avenue
PO Box 9
Woodland, Washington 98674

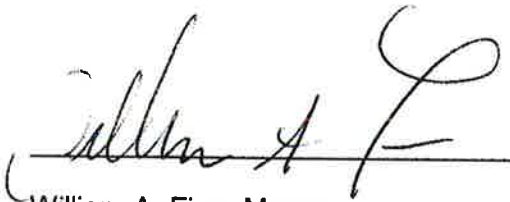
TO: ROTARY FOUNDATION OF WOODLAND
c/o Asha Riley, President
Columbia State Bank, Woodland Branch
782 Goerig Street
Woodland, Washington 98674

27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

28. **Authority to Sign** The undersigned representative for the City of Woodland certifies he has the authority to execute this Agreement on behalf of the City as a binding contract. The undersigned representative for the Rotary Foundation certifies he has the authority to execute this agreement on behalf of the Rotary Foundation as a binding contract.

CITY OF WOODLAND

ROTARY FOUNDATION OF WOODLAND



William A. Finn, Mayor

Date: 9-20-2016



Asha Riley, President

Date: 9-21-16

ATTEST:



Mari E. Ripp, Clerk-Treasurer