

**City Of Woodland
City Council Meeting Agenda Summary Sheet**

Agenda Item: Rotary MOU	Agenda Item #: (O) Workshop
	For Agenda of: 06/24/2013
	Department: Mayor
	Date Submitted: 06/19/2013

Cost of Item: _____	BARS #:
Amount Budgeted: _____	Description:
Unexpended Balance: _____	

Department Supervisor Approval: Grover B. Laseke, Mayor / s /

Committee Recommendation: n/a

Agenda Item Supporting Narrative (list attachments, supporting documents): Rotary MOU
Summary Statement/Department Recommendation: This item will be discussed at the workshop.

**AGREEMENT BETWEEN THE CITY OF WOODLAND AND THE ROTARY CLUB 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 Club of Woodland (hereinafter the "Rotary Club"), 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 Club 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 Club 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 Club 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 Club 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. **Obligations of the Parties.**

CITY OBLIGATIONS

A. The City, by and through its Parks Board and designees, shall ~~collaborate with the Rotary Club in planning the sports/athletic fields and facilities for~~ make advisers available to the Rotary Club for development of the Park;

~~B. The City, by and through its Parks Board and designees, shall oversee Facility planning and site development;~~

~~C.B.~~ The City shall assume the obligation to maintain and repair the Facilities upon acceptance and completion;

~~D. The City shall collaborate with the Rotary on the placement of infrastructure;~~

~~E.C.~~ The City shall respond in a timely manner to questions and concerns of the Rotary Club;

~~F. The City shall collaborate with the Rotary Club in finding low-cost, high-quality, low-maintenance equipment/materials if requested by the Rotary Club;~~

~~G.D.~~ Notwithstanding the above, the City shall not assume any responsibility for construction or for funding of the improvements or equipment initiated by Rotary Club.

ROTARY OBLIGATIONS

A. The Rotary Club shall perform fund-raising for the development and construction of the Facilities in the Park. The Rotary Club will follow Rotary policies, guidelines and directives for fund raising and sponsorships;

B. The Rotary Club shall ~~collaborate with~~ inform the City ~~in the~~ regarding the Rotary Club's planning and side development of the Facilities, ~~and with the choice of The Rotary Club shall chose~~ equipment and materials with an emphasis on low-cost, high-quality, low-maintenance equipment/materials. Rotary Club shall ~~also obtain the City's prior approval before proceeding with significant or material design or construction activities; all necessary permits and approvals as required by law.~~

C. The Rotary Club shall select the contractor(s) to perform the design and construction of the Facilities;

D. The Rotary Club shall ~~confer with~~ inform and update the City's designated representative or designated public official, ~~as necessary, to discuss matters related to~~ regarding the design and construction of the Facilities;

~~E. The Rotary Club will collaborate with the City in the selection and amenities of the specific equipment for the site;~~

~~F.E.~~ F.E. The Rotary Club 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;

~~G.F.~~ G.F. The Rotary Club shall respond in a timely manner to questions and concerns of the City;

~~H.G.~~ H.G. The Rotary Club shall be responsible for the construction of the park improvements on Scott Hill;

~~H.~~ H. The Rotary Club 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;

~~J.I.~~ J.I. The Rotary Club 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;

~~K.J.~~ K.J. The Rotary Club 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.

3. **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 Club 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 Rotary Club~~ or that were not reasonably foreseeable.

4. **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 City retains the authority to enter into an interlocal agreement with other government entities to obtain the services of persons experienced in the development of similar facilities and have that designee assist in administering the project. Even though~~ The Rotary Club will retain the independent responsibility to construct, design, and direct the improvements. ~~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.~~

5. **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~~ determine whether the Facilities must be constructed in phases. ~~Phasing may become necessary should grants from other government entities require that a municipality be responsible for design and construction of a specific part of the project.~~

6. Independent Contractor Acting Independently From The City. The Rotary Club and the City understand and expressly agree that the Rotary Club is ~~an independent contractor acting independently from the City~~ in the performance of each and every part of this Agreement. The Rotary Club, ~~as an independent contractor,~~ assumes the entire responsibility for carrying out and accomplishing the work/services required under this Agreement. The Rotary Club, ~~as an independent contractor,~~ 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 Club 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 Club and/or any officer, employee or agent of the Rotary Club and the City. The Rotary Club shall obtain whatever licenses or bonds required by law to perform its obligations under this Agreement.

7. 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 Club 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.

8. 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 Club 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 Club or its members, contractors, agents, assigns, contributors or volunteers. The City shall not be a guarantor or surety of any Rotary Club obligation.

9. Qualifications of Contractors and Subcontractors. Rotary Club 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.

10. 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 Club 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.

11. **License to Enter Property.** The City grants Rotary Club 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 Club shall notify the City of any injury or other claim event within 5 days of its occurrence or within 5 days of when Rotary Club 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.

12. **Indemnification and Hold Harmless.**

A. Each party hereto agrees to maintain responsibility and assumes 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. ~~During construction~~ Rotary Club 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 but limited to those arising from construction arising from operations under the contract, whether such operations are performed by Rotary Club 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. Talking point for City Attorney—Rotary liability forever? ~~and shall also assume the liability for injury and/or damages to adjacent or neighboring property by reason of work done under this Agreement. Rotary Club's obligation to indemnify, defend, and save harmless shall not be eliminated or reduced by any alleged concurrent negligence of the City or its agents, employees, and officers;~~

C. ~~Contractor~~ All contractors and subcontractors shall warrants 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 ~~the Contractor~~ and subcontractors or the rights of the City;

D. ~~The provisions of this Section shall survive the termination or expiration of this Agreement~~ Notwithstanding any provision herein, Rotary Club 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 Club, 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 Club 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.

13. **Assignment.** Rotary Club may not assign this Agreement. The City may assign this Agreement to another municipality with jurisdiction or to a special purpose district by interlocal agreement.

14. **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.

15. **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.~~

16. **Compliance with Public Records Laws.** Given the short period of time allowed cities to respond to public records requests, the Rotary Club agrees to promptly ~~comply with~~ ~~public provide~~ records requested ~~and filed with by~~ the City pertaining to the project, but the Rotary Club 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.

17. **Insurance.**

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

B. Rotary Club 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 Club 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 ~~prior written~~ notice has been received by the City, transmitted by certified mail, return receipt requested. Any contractor hired by Rotary shall include subcontractors as insureds under the Contractors' policies and provide proof.

18. **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.

19. **Dispute Resolution.** In order to resolve in a timely manner any disputes through cooperation and negotiation, the City and the Rotary Club 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.

20. **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.

21. **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.

22. **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.

23. **Termination.** The ~~Either~~ parties may terminate this Agreement, with or without cause, by written notice from either party to the other party thirty (30) days in advance of the termination.

24. **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.

25. **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
Grover Laseke, Mayor
230 Davidson Avenue
Post Office Box 9
Woodland, Washington 98674

TO: DOWNTOWN ROTARY CLUB OF WOODLAND
c/o ~~Randy Walter~~Robert Hasbrouck, President
Columbia State Bank, Woodland Branch
782 Goerig Street
Woodland, Washington 98674

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

27. **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 Club certifies he has the authority to execute this agreement on behalf of the Rotary Club as a binding contract.

CITY OF WOODLAND

ROTARY CLUB OF WOODLAND

Grover Laseke, Mayor
Date: _____

~~Randy Walter~~Robert Hasbrouck, President
Date: _____

ATTEST:

Mari Ripp, City Clerk

Approved as to form only:

William J. Eling, City of Woodland Attorney