

**AGREEMENT BETWEEN THE CITY OF YAKIMA AND
THE ROTARY CLUBS OF YAKIMA FOR DESIGN, INSTALLATION, AND USE OF
LIGHTING AT PUBLIC RECREATION FACILITIES**

THIS AGREEMENT is entered into between the City of Yakima (hereinafter the "City"), whose address is 129 North 2nd Street, Yakima, Washington 98901, and, the Rotary Club of Yakima, the Rotary Club of Yakima Southwest, and the Yakima Sunrise Rotary Club (hereinafter collectively the "Rotary Clubs"), for purposes of the design, installation, and use of lighting at the Kiwanis Park/Gateway Sports Complex skate park and basketball courts, the Chesterley skate park and the Randall Park basketball courts (hereinafter the "recreation facilities").

WHEREAS, the City is the owner of Chesterley Park located at 40th and River Road, Yakima, Washington, and Kiwanis Park located at 1501 E. Maple Street, Yakima, Washington, and Randall Park located at 1399 S. 48th Avenue; and

WHEREAS, the recreation facilities are a valuable recreational resource for the community; and

WHEREAS, the City is committed to ensuring that improvements to the recreation facilities serve the best interests of the community; and

WHEREAS, the Rotary Clubs are dedicated to enhancing the recreation facilities for the benefit of the community, and

WHEREAS, there is lighting currently at some of the recreation facilities that will remain in place, however it provides insufficient illumination for the recreation facilities to allow park users during evening hours; and

WHEREAS, additional lighting at the recreation facilities would enhance security and extend the hours of available use and enjoyment; and

WHEREAS, the Rotary Clubs are willing to contribute financial and other resources to the City for the installation and design of additional lighting for the recreation facilities; and

WHEREAS, the City is willing to accept the financial and other resources offered by the Rotary Clubs for the installation and design for lighting at the recreation facilities;

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 Clubs in the installation and design of additional lighting at the recreation facilities and to provide for effective cooperation in the implementation of the provisions set forth herein.

2. **Obligations of the Parties.**

The City shall perform the following obligations in regard to the lighting projects:

A. The City shall assist in planning for additional lighting at the recreation facilities;

B. The City shall oversee the site development of the area where the additional lighting will be installed;

C. The City shall ensure the site has accessibility for the handicapped;

D. The City shall maintain and repair the additional lighting, as necessary, once its installation has been completed and accepted by the City;

E. The City shall take other steps, as necessary, to ensure public safety in the use and enjoyment of the recreation facilities;

F. City will secure an additional \$50,000 from REET funds, the Parks Capital fund, or other grants for development of additional lighting for the sites; and

G. City will ensure the new lighting complies with the State Environmental Policy Act (SEPA) before installation.

The Rotary Clubs shall perform the following obligations in regard to the lighting projects:

A. The Rotary Clubs shall spend up to \$130,000 for the installation and design of the additional lighting for the recreation facilities, and reserve the right to voluntarily contribute additional sums as they deem necessary and appropriate;

B. The Rotary Clubs shall assist the City in the planning and site development of additional lighting at the recreation facilities;

C. The Rotary Clubs shall assist the City in selecting the contractor(s) to perform the design and installation of the additional lighting and shall select the lighting for installation therein, the City shall have an opportunity to review and comment on the design and choice of lighting prior to installation;

D. The Rotary Clubs shall confer with the City as necessary in regard to any outstanding matters related to the maintenance and repair of the recreation facility lighting;

E. The Rotary Clubs shall be allowed to install a sign that is consistent with the Yakima Municipal Code near the improvements recognizing Rotary or the Rotary Clubs as the donors of the project, and the sign shall be placed in a location that is agreed upon by both parties; and

F. The Rotary Clubs shall participate in the oversight of the construction of the lighting subject to the direction of the selected contractor.

3. Term. The term of this Agreement shall commence upon execution hereof and shall remain in effect unless the Agreement is terminated earlier by either party under Section 16 of this Agreement. The Rotary Clubs 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 Rotary Clubs or that were not reasonably foreseeable.

4. Administration. This Agreement shall be administered by the City's Parks and Recreation Division.

5. Independent Contractor. The Rotary Clubs and the City understand and expressly

agree that the Rotary Clubs are collectively acting as an independent contractor in the performance of each and every part of this Agreement. The Rotary Clubs, as an independent contractor, assume the entire responsibility for carrying out and accomplishing the work/services required for their performance under this Agreement. The Rotary Clubs, as an independent contractor, shall have the sole judgment of the means, mode or manner of the actual performance of work/services required for their performance under this Agreement. Additionally, and as an independent contractor, the Rotary Clubs and their employees shall make no claim of City employment nor shall claim against the City 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 Clubs and/or any officer, employee or agent of the Rotary Clubs and the City.

6. 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 Clubs may rely upon or enforce any provision of this Agreement.

7. Indemnification and Hold Harmless.

A. The Rotary Clubs agree to release, indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of the Rotary Clubs, or any Rotary Club's agent or subcontractor, in the performance of this Agreement, except for claims caused by the City's sole negligence. The City's right to indemnification includes attorney's fees and costs associated with establishing the right to indemnification hereunder in favor of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Rotary Clubs and the City, the Rotary Clubs' liability, including the duty and cost to defend, shall be only to the extent of Rotary Clubs' negligence.

C. It is specifically and expressly understood that the Rotary Clubs waive any immunity that may be granted to them under Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. The Rotary Clubs' indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under worker's compensation acts, disability benefit acts or any other benefit acts or programs. The Rotary Clubs shall require that their subcontractors, and anyone directly or indirectly employed or hired by the Rotary Clubs, and anyone for whose acts the Rotary Clubs may be liable in connection with their performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.

D. The City agrees to release, indemnify, defend and hold harmless the Rotary Clubs, their officers, directors, insurers, volunteers, employees, agents, representatives and subcontractors from any and all claims, demands, actions, suits, causes of action, arbitration, mediations, proceedings, costs, and/or litigation expenses to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives,

arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors or omissions of the City, whether during the installation of the additional lighting or following the completion of its installation and City's acceptance thereof. The Rotary Clubs' right to indemnification includes attorney's fees and costs associated with establishing their right to indemnification hereunder in favor of the Rotary Clubs.

E. Survival. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8. 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. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement.

9. 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.

10. No Insurance. It is understood the City does not maintain liability insurance for the Rotary Clubs or their employees and subcontractors, nor do the Rotary Clubs maintain liability insurance for the City or its employees and contractors.

11. 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.

12. Dispute Resolution. The City and the Rotary Clubs shall meet to discuss any outstanding issues related to the development of the recreation facility lighting and the implementation of this Agreement in order to resolve any disputes through cooperation and negotiation.

13. 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.

14. 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.

15. 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 direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

16. Termination. Either party may terminate this Agreement, with cause, by written notice of default from the non-defaulting party to the defaulting party if the default is not cured within thirty (30) days following the giving of such notice. In addition, either party may terminate this Agreement, without cause, upon thirty (30) days' written notice to the other party before either party has incurred substantial expenses (defined as expenses in excess of \$1,000) following the full execution of this Agreement, to perform its obligations hereunder, but not thereafter, except for cause.

17. 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.

18. 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 YAKIMA
Robert Harrison, City Manager
City of Yakima
129 North Second Street
Yakima, WA 98901

TO ROTARY CLUBS OF YAKIMA
Carolyn Flory, Executive Director
1704 W Nob Hill Blvd
Yakima, WA 98902

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

CITY OF YAKIMA

ROTARY CLUB OF YAKIMA

Robert Harrison, City Manager

Rick Fairbrook, President

Date Signed

Date Signed

**ROTARY CLUB OF YAKIMA
SOUTHWEST**

Dirk Bernd, President

Dated Signed

ROTARY CLUB OF YAKIMA SUNRISE

Vicki Dwight, President

Date Signed

ATTEST:

Sonya Claar Tee, City Clerk

City Contract No. _____

City Resolution No. _____