

**AGREEMENT BETWEEN THE CITY OF YAKIMA AND  
THE YAKIMA ROTARY CLUB FOR DEVELOPMENT OF A CHILDREN'S PLAYGROUND  
IN THE UPPER KIWANIS PARK**

**THIS AGREEMENT** is entered into between the City of Yakima (hereinafter the "City"), whose address is 129 North 2<sup>nd</sup> Street, Yakima, Washington 98901, and, the Yakima Rotary Club (hereinafter the "Yakima Rotary Club"), for purposes of the development of a children's playground in the Upper Kiwanis Park (hereinafter the "Park").

**WHEREAS**, the City is the owner of the Park located at 405 Fair Avenue, Yakima, Washington; and

**WHEREAS**, the Park is a valuable recreational resource for the community; and

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

**WHEREAS**, the Yakima Rotary Club is dedicated to enhancing the Park for the benefit of the community; and

**WHEREAS**, the Yakima Rotary Club is willing to contribute financial and other resources to the City for the design and development of a children's playground at the Park; and

**WHEREAS**, the City is willing to accept the financial and other resources offered by the Yakima Rotary Club for the design and development of a children's playground at the Park;

**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 Yakima Rotary Club in the development of Upper Kiwanis Park for a children's playground 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 Park:

- A. The City shall assist in planning for a new children's playground in the Park;
- B. The City shall oversee the site development of the area where the construction of the playground is planned;
- C. The City shall ensure the site has accessibility for the handicapped;
- D. The City shall maintain and repair the playground; and
- E. The City shall take other steps, as necessary, to ensure public safety in the use and enjoyment of the playground.

The **Yakima Rotary Club** shall perform the following obligations in regard to the Park:

- A. The Yakima Rotary Club shall provide up to One-Hundred-and-Forty-Thousand Dollars (\$140,000.00) for the development and construction of the new playground in the Park, and reserves the right to voluntarily contribute additional sums as it deems

necessary and appropriate, subject to the City's approval which will not unreasonably be withheld;

B. The Yakima Rotary Club shall assist the City in the planning and site development of the playground

C. The Yakima Rotary Club shall select the contractor(s) to perform the design and construction of the playground and shall select the playground equipment for installation therein;

D. The Yakima Rotary Club shall assist the City in the selection of amenities, not including the specific playground equipment, for the site, including, but not limited to, benches and tables; and

E. The Yakima Rotary Club shall participate in the construction of the playground 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 Yakima 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 Yakima Rotary Club 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 Yakima Rotary Club and the City understand and expressly agree that the Yakima Rotary Club is an independent contractor in the performance of each and every part of this Agreement. The Yakima Rotary Club, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the work/services required for its performance under this Agreement. The Yakima 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 for its performance under this Agreement. Additionally, and as an independent contractor, the Yakima Rotary Club 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 Yakima Rotary Club and/or any officer, employee or agent of the Yakima Rotary Club 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 Yakima Rotary Club may rely upon or enforce any provision of this Agreement.

7. **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. The provisions of this Section shall survive the termination or expiration of this Agreement.

C. Nothing contained in this Section or this Agreement shall create a liability or a right of indemnification in any third party.

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 Yakima Rotary Club or its employees and subcontractors, nor does the Yakima Rotary Club 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 Yakima Rotary Club shall meet to negotiate any outstanding issues related to the development of the playground and the implementation of this Agreement in order to resolve any disputes through cooperation and negotiation to the greatest extent possible.

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 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  
R. A. Zais, Jr., City Manager  
City of Yakima  
129 North Second Street  
Yakima, WA 98901

TO: YAKIMA ROTARY CLUB  
Craig Mendenhall, President  
P.O. Box 464  
Yakima, WA 98907-0464


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

20. **Filing.** Copies of this Agreement shall be filed with the Yakima County Auditor pursuant to RCW 39.34.040 and with the City Clerk of Yakima.

CITY OF YAKIMA

YAKIMA ROTARY CLUB


  
\_\_\_\_\_  
R.A. Zais, Jr., City Manager

  
\_\_\_\_\_  
Craig Mendenhall, President

3/18/10  
\_\_\_\_\_  
Date Signed

2-22-2010  
\_\_\_\_\_  
Date Signed

ATTEST:

  
\_\_\_\_\_  
Deborah Kloster, City Clerk



CITY CONTRACT NO: 2010-17  
RESOLUTION NO: R-2010-22