

City Contract _____

MEMORANDUM OF UNDERSTANDING
Between
CITY OF CHEYENNE AND CHEYENNE ROTARY CLUB FOUNDATION

Regarding
DONATION OF ROTARY PARK TO THE CITY OF CHEYENNE

THIS AGREEMENT is made and entered into by and between the City of Cheyenne, Wyoming, a municipal corporation organized under the laws of the State of Wyoming, located at 2101 O'Neil Avenue, Cheyenne, Wyoming 82001 ("City"), and Cheyenne Rotary Club Foundation, located at P.O. Box 511, Cheyenne, Wyoming 82003 ("Rotary").

I. PURPOSE

Rotary and the City have a mutual desire to develop a new park (hereinafter referred to as "Rotary Park") from lands to be acquired by Rotary. The purpose of this Agreement is ~~for the Cheyenne to specify the conditions under which~~ Rotary ~~Club Foundation to will~~ purchase and donate Rotary Park to the City. ~~Rotary and the City have a mutual desire to develop a new park from the lands being acquired by Rotary.~~ This Agreement will outline the responsibilities and commitments of the City and Rotary in the development of Rotary Park.

II. TERM

This Agreement shall commence on the date last executed by the duly authorized representatives of the parties to this Agreement and shall remain in full force and effect until September 1, 2027, or terminated as provided herein.

III. RESPONSIBILITIES OF ROTARY

~~Cheyenne~~ Rotary ~~Club Foundation~~ will purchase the lands described in detail in Exhibit A, attached hereto and incorporated herein by reference. This property is generally described here as twelve point zero six (12.06) acres of land located at the south-west corner of Hoy Road and Powderhouse Road. Following the purchase, Rotary will ~~then~~ donate this land to the City for use of a public park to be named "Rotary Park."

IV. RESPONSIBILITIES OF THE CITY

The City agrees that the land donated by Rotary, and described in Exhibit A, will be named "Rotary Park" and said name and use of the land ~~use as a public park~~ will exist in perpetuity.

V. RESPONSIBILITIES OF ROTARY AND THE CITY

- A. Upon approval of this Agreement by both parties, Rotary will donate and convey the parcel of land ~~shown~~ described in Exhibit A to the City with the understanding that the City will begin the process of developing said lands into a new public park.
- B. Upon completion of the conveyance of said lands from Rotary to the City, Rotary will be permitted to erect at least two (2) signs on the property describing the park's name. ~~The plan is that any~~ All Rotary-sponsored signage contents, locations, materials and timing ~~will~~ shall be submitted to the City's Community Recreation and Events Department for review and approval prior to the signage being installed or otherwise placed at Rotary Park.
- C. The City will develop a master plan for Rotary Park, and for appropriate adjacent lands, as an initial step in the development process. Rotary ~~will~~ may provide input during the planning process, and the City will seek to involve Rotary in final plans for Rotary Park. Rotary will provide two (2) persons to be included in the selection and design committee for the master plan for Rotary Park. All infrastructure improvements at Rotary Park identified in the master plan shall be include cost estimates and appropriate draft implementation schedules. ~~The City and Rotary will include features in the~~ master plan for Rotary Park will include features that support Rotary's initiatives towards:
1. Peace and Conflict Resolution: Public access to parks and recreation opportunities are linked to a sense of public pride and cohesion to the community, and reduction in crime. Rotary Park may include spaces for gathering, contemplation, and promotion of peace.
 2. Disease Prevention and Treatment: Development and City management of Rotary Park ~~in this location~~ will help prevent insect-borne diseases on an ongoing seasonal basis, and the spread of other diseases that can become present during major flooding events.
 3. Water and Sanitation: Enhancements to Dry Creek within Rotary Park will be part of the City's efforts to improve water quality for the community by increasing water storage and enhancing water filtration along the Powderhouse corridor drainageway and will result in improved life safety during major flooding events along Dry Creek.
 4. Maternal and Child Health: Parks are places that citizens and visitors of all ages visit to stay active and improve physical and mental health. Rotary Park will include accessible pathways, and may include hard and soft surface pathways.
 5. Basic Education and Literacy: Rotary Park will include educational components that may include topics such as Cheyenne's and Rotary's influential citizens; Cheyenne and Rotary history; the history of the property; Rotary's mission including community service, leadership,

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building goodwill and encouragement of high ethical standards; environmental and flood control benefits of park features; native animals and insects and their habitat such as birds, butterflies; and aviation.

6. Economic and Community Development: Quality parks and recreation are a major influence in the relocation of businesses and people in all walks of life to a community. The location of Rotary Park near one of the most travelled local thoroughfares in Wyoming presents a unique opportunity to the community of Cheyenne, preserving open space in the urban corridor, providing residents and visitors with a resource to be outdoors that is near to many community resources, providing additional spaces to host events in open spaces, and presenting the community in a positive light to the many people who travel along ~~Del~~ Dell Range Boulevard.
7. Protecting the Environment: Rotary Park will be integral to the City's plans to improve water storage and water quality along Dry Creek. Rotary Park and the planned improvements will help improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetative buffers to development, produce habitat for wildlife, and provide a place for children and families to connect with nature and recreate outdoors together. Rotary Park will be developed in a way to enhance the environment without requiring significant scarce natural resources, including the use of native and/or low water use and low maintenance vegetation.
8. City shall complete a Request for Proposal (RFP) to go out for bid b June 30, 2024.
- ~~7.9.~~ In the event the City is unable to fund its obligations regarding Rotary Park as provided herein before the expiration date of this Agreement and any extensions of the terms approved by the City and Rotary, the City will return the property to Rotary.

~~Infrastructure improvements at Rotary Park identified in the master plan will be described with cost estimates and a draft implementation schedule will be provided.~~

- D. Rotary commits to assisting with community clean-up of Rotary Park on an ongoing and regular basis, ~~as well as may provide assistance and commits to assisting~~ with other development or maintenance projects whenever possible.
- E. The Cheyenne Rotary Club Foundation is a 501(c)(3), and as such will assist to raise additional funds to assist the City to build the park, including pursuing grant opportunities and additional gifts, thereby enhancing the Rotary Park development schedule.

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VI. GENERAL PROVISIONS

- A. Independent Contractor. The services to be performed by Rotary are those of an independent Contractor and not as an employee of City. Rotary is not eligible for City of Cheyenne employee benefits and will be treated as an independent contractor for federal tax filing purposes. Rotary assumes responsibility for its personnel who provide services pursuant to this Agreement and will make all deductions required of employers by state, federal, and local laws and shall maintain liability insurance for each of them. Rotary is free to perform the same or similar services for others.
- B. Acceptance Not Waiver. City's approval of the reports and work or materials furnished hereunder shall not in any way relieve Rotary of responsibility for the technical accuracy of the work. City's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- C. Termination. This Agreement may be terminated: (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties in writing.
- D. Entire Agreement. This Agreement consisting of seven (7) pages plus Exhibit A, consisting of one (1) page represents the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations, and agreements, whether written or oral.
- E. Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.
- F. Modification. This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.
- G. Invalidity. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the City is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable.

- H. Applicable Law and Venue. The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming, without regard to its conflict of laws principles. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to Rotary and to City in executing this Agreement. This provision is not intended nor shall it be construed to waive City's governmental immunity as provided in this Agreement.
- I. Contingencies. Rotary certifies and warrants no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement.
- J. Discrimination. All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.
- K. ADA Compliance. All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, ~~and/or~~ and any properly promulgated rules and regulations relating thereto.
- L. Governmental/Sovereign Immunity: The City of Cheyenne does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. § 1-39-101, *et seq.*, by entering into this Agreement. Further, City fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract, or any other theory of law, based on this Agreement.
- M. Indemnification. To the fullest extent permitted by law, Rotary agrees to indemnify and hold harmless City, its elected and appointed officials, employees, and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands, or expenses arising solely from or in connection with the work that is to be performed by or on behalf of Rotary for the City except to the extent liability is caused by the sole negligence or willful misconduct of City, its elected and appointed officials, employees, and volunteers. Rotary shall carry liability insurance sufficient to cover its obligations under this provision and provide City with proof of such insurance.

- N. Third Parties. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to the Agreement and shall inure solely to the benefit of the parties to this Agreement.
- O. Conflict of Interest. City and Rotary affirms, to their knowledge, that no Rotary employee has any personal beneficial interest whatsoever in the Agreement described herein. No staff member of Rotary's staff, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.
- P. Force Majeure. The performance of the Agreement by either party shall be subject to force majeure including, but not limited to, acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including, but not limited to, the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence beyond the control of the parties, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay the performance required by this Agreement. The Agreement may be cancelled by either party, without liability, damages, fees, or penalty, and any unused deposits or amounts paid shall be refunded, for any one or more of the above reasons, by written notice to the other party.

~~Q. Limitation on Payment. City's payment obligation is conditioned upon the availability of funds which are appropriated, allocated, or approved by the Governing Body for the payment of this obligation. the obligations specified herein. If funds are not allocated, appropriated, or approved and available, in the fiscal judgment of the City, for the continuance of the services and equipment provided by the Rotary, the Agreement may be terminated by City at the end of the period for which funds are available. No penalty shall accrue to City in the event this provision is exercised, and City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. In the event the City is unable to fund its obligations regarding Rotary Park as provided herein before the expiration date of this Agreement and any extensions of the terms approved by the City and Rotary, the City will return the property to Rotary.~~

Commented [SB1]: Moved to Section V per discussion with Rotary on 8/7/23.

~~R.Q.~~ Notices. All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such party's address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

R. Compliance with Laws. Rotary shall comply with all applicable federal, state, or local laws, regulations, and ordinances.

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[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

This Agreement is effective the date of the last signature affixed to this page.

CITY OF CHEYENNE, WYOMING

By: _____ Date _____
Patrick Collins, Mayor

(SEAL)

Attest:

BY: _____
Kristina F. Jones, City Clerk

CHEYENNE ROTARY CLUB FOUNDATION

By: _____ Date _____
Brent Lathrop, President of the Board of Trustees

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