

**AGREEMENT BETWEEN KITTITAS COUNTY, CITY OF ELLENSBURG, AND
ELLENSBURG NOON ROTARY REGARDING THE PURCHASE AND
ASSEMBLY OF BLEACHERS AT ROTARY PARK AND THE
CONSTRUCTION OF A SEASONAL ACCESS ROAD AND SEASONAL
PARKING LOT AT ROTARY PARK**

THIS AGREEMENT by and between Kittitas County, a subdivision of the State of Washington ("County"), the City of Ellensburg, a Washington municipal corporation ("City"), and the Ellensburg Noon Rotary, a Washington nonprofit corporation ("Rotary"), is made this 2nd day of November, 2010, for the purposes described herein.

WHEREAS, The County and City have each contributed funds for the construction of amenities at Rotary Park; and,

WHEREAS, The parties wish to construct bleachers in the Rotary Park; and,

WHEREAS, On June 2, 2009, the County Board of Commissioners authorized expending \$48,000 for bleacher construction; and,

WHEREAS, Said bleachers were constructed, yet the parties did not enter into a written agreement for such construction, and said construction cost \$33,654.00; and,

WHEREAS, The parties wish to enter into a written agreement for such bleacher expenditure and authorize the remaining \$14,346.00 be used to improve parking (the "improvements"); and,

WHEREAS, Pursuant to Revised Code of Washington section 35.21.278, the County & City may, without regard to competitive bidding laws for public works, contract with a service organization, a community, youth, or athletic association or other similar association for the purpose of making improvements to a park; and,

WHEREAS, The parties wish to contract within the County's authority under RCW 35.21.278, for the construction of said bleachers and parking; and,

WHEREAS, The parties wish to memorialize their understanding concerning the park improvements, their construction, and County reimbursement of Rotary for their expenses for that construction; and,

WHEREAS, The parties wish to acknowledge the contribution to this project, and to area recreation as a whole, made by each other.

NOW THEREFORE, the parties hereto agree as follows:

1. Improvements. Rotary will construct the bleachers and parking improvements in the Rotary/West Ellensburg Park, said park belonging to the City. Title to said improvements shall vest in the City. These improvements are more particularly described in the 'Scope of Work', appended hereto as Exhibit "A" and incorporated herein by this reference.
2. Minimum value of improvements. In accordance with the requirements of RCW 35.21.278, the improvements subject to reimbursement under this agreement, shall have a value at least equal to three (3) times the amounts to be paid to Rotary by the County as reimbursement therefore. Rotary shall complete the improvements having a value of at least \$144,000.00 before any payment is due under this agreement. At no time shall the amount to be paid by the County under this agreement exceed one third (1/3) of the value of the improvements actually completed by Rotary hereunder or \$48,000.00, whichever is smaller.
3. Determination of value. The value of the improvements shall be as determined by City's Parks & Recreation Director. If he/she is unable or unwilling to issue a determination of the improvements' value, the parties shall jointly select another qualified individual or entity to make such determination.
4. Volunteers. In accordance with the provisions of RCW 35.21.278, Rotary may use volunteers in its completion of the improvements and provide volunteers with clothing and tools, meals and refreshments, accident/injury coverage, and reimbursement of their expenses.
5. Control of project. The improvements will be constructed on City-owned property. Construction of the improvements will be a project under City control.
6. Liability. The City maintains liability coverage through the Association of Washington Cities Risk Management Service Agency. That coverage extends to all employees and volunteers, individually and collectively when acting within the scope and performance of their duties on behalf of the City. Accordingly, liability that results from the acts or omissions of Rotary volunteers acting within the course and scope of their duties as set forth herein shall be the responsibility of the City, and the City agrees to indemnify and hold the Rotary, its members, and the County harmless from such liability.
7. Future support. The City and County make no commitment to future support and assume no obligation for future support of the activity contracted for herein, except as may be expressly set forth in this agreement.
8. Assignment. Rotary shall not assign this agreement without the prior written consent of the City and the County.

9. Recognition. An appropriate acknowledgement, such as a plaque or sign, shall be affixed to the completed Structure recognizing the parties to this agreement for their contributions to the Structure, area recreation, and the life of this community.

10. Entire agreement; Amendment. This agreement is the complete expression of the terms herein and any oral representations or understandings not incorporated herein are excluded. This agreement may be amended only through mutual written agreement of the parties.

11. Term of Agreement. This agreement shall run from date of execution to the date of completion of the improvements shown in Exhibit "A" hereto, but in no event to exceed a period of 12 months.

12. Compliance with Laws. Each party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances.

13. Relationship of the Parties. No agent, employee or representative of one party shall be deemed to be an agent, employee or representative of another party for any purpose, and the employees of one party are not entitled to any of the benefits other parties provide to their employees. The relationship established herein is that of independent contractor.

14. Agreement Not For Benefit of Third Parties. This Agreement is entered into solely for the benefit of the parties hereto and vests no rights in, or is it enforceable by, any third parties.

15. Jurisdiction. Any legal dispute between the parties to this Agreement shall be governed by the laws of the State of Washington, and any action to enforce this Agreement shall be brought in Kittitas County, Washington.

16. Modification. The provisions of this Agreement may be modified or amended only by written mutual consent of the parties.

17. Waiver. A failure by any party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

18. Severability. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

19. Filing. This Agreement shall be filed with the Kittitas County Auditor or posted on the County's webpage, as provided for in and required by RCW 39.34.040.

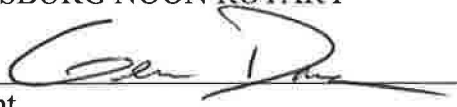
AGREED TO AND SIGNED this 20th day of Sept, 2010.

KITTITAS COUNTY



Mark McClain, Chairman 11-02-10

ELLENSBURG NOON ROTARY



President

CITY OF ELLENSBURG



Mayor

ATTEST:



City Clerk

EXHIBIT "A"

Rotary Park Seasonal Access Road and Seasonal Parking Lot

Scope of Work to be performed by the

Rotary Club of Ellensburg

In Cooperation with the City of Ellensburg and Kittitas County

LOCATION

This project is located at Rotary Park and West Ellensburg Park.

SCOPE

This project consists of the Rotary Club of Ellensburg (Rotary) using Rotary labor and funding from the City of Ellensburg, Kittitas County and private donations to construct a seasonal parking lot and seasonal access road at Rotary Park and reconfiguring the outfield fence at the West Ellensburg Park baseball field.

TIME OF COMPLETION

All work shall be completed by Rotary within three hundred and sixty five (365) calendar days after approval from Council to proceed.

DESCRIPTION OF WORK

This section describes the work to be completed on the site. It is the Rotary's responsibility to provide all details required for a neat and workmanlike finished project.

Access Road

1. Construct a gravel seasonal access road 340' long from 1st & Lincoln Street to Rotary Park. Roadway will be 22' wide, constructed of 12" of 1 ¼ gravel, graded and compacted with road fabric.
2. Existing power poles located adjacent to the access road will be protected by ecology blocks.

Parking Lot

1. Construct gravel seasonal parking lot that accommodate up to 100 cars. Parking lot will be consist of 8" of 1 ¼ gravel graded and compacted.

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West Ellensburg Park Baseball Field

1. Reconfigure the existing outfield fence at West Ellensburg Park. Staff will work with Rotary to determine the most suitable fence material and other issues related to fencing.
2. Existing irrigation system will be reconfigured.
3. Park tree will be removed and replaced.

MATERIALS

All materials used will be approved by designated Parks & Recreation staff.

The items of work described are not necessarily in the order of work the Rotary might choose to do them in. Rotary is responsible for the disposal of all waste materials.

PROJECT COORDINATION AND MANAGEMENT

The Rotary agrees to include the City in decisions concerning installation, preparation, and installation procedures. Rotary will provide City staff with progress reports concerning field development.

QUALITY CONTROL/CONTROL OF INSTALLATION

All work is to be performed by persons qualified to produce workmanship of specified quality. City staff will inspect work in accordance with City specifications.

SAMPLES

Rotary will provide City staff with samples to illustrate functional and aesthetic characteristics of the Product.

MAINTENANCE MATERIALS

Provide products, spare parts, operating and maintenance materials and manuals to the City at the completion of the project.

PROPOSED PARKING AREA

PROPOSED STANLEY SHED
LOCATION

