

**West Bay Park Partnership Agreement
Between
The Olympia Rotary Club and City of Olympia**

This Agreement is made and entered into this ____ day of June 2007, by and between the Olympia Rotary Club, herein referred to as "Rotary", and the City of Olympia, herein referred to as "the City."

Recitals

Whereas, Rotary proposes to make a gift to the City by developing an area to be known as "Rotary Point" within the City's West Bay Park; and,

Whereas, the City will benefit from this partnership to help develop needed waterfront recreation facilities; and,

Whereas, RCW 35.21.100 authorizes cities to accept donations and OMC 03.56.020 authorizes the City Manager to accept donations.

Purpose

This Agreement between the City and Rotary is necessary to help assure that the project is carefully designed and executed in a cooperative manner that results in a successfully completed park that complies with City development standards, local, state and federal permits, state funding agency requirements and within agreed upon donation amounts, schedules, phases and procedures. The Agreement defines City and Rotary responsibilities and other requirements. It is needed to clearly communicate requirements and expectations to the many people involved in making this project a success.

Project Scope

Rotary will design and build the improvements identified on the attached drawings as Rotary Point. Rotary's responsibilities under this Agreement are within the Water Access Grant boundary that are east of the West Bay Trail and above the mean high tide line as shown in Exhibit A (hereinafter referred to as the Rotary Point Project.), with the exception of the interpretive signs, which will be designed and fabricated by City contracts. Rotary may place a bronze logo plaque within Rotary Point to commemorate Rotary's contribution to the park.

Responsibilities

City

The City will assign a Project Manager to coordinate all aspects of West Bay Park Phase I design, permitting and construction, including the Rotary Point Project. The full scope of work of West Bay Park Phase I, as illustrated in Exhibits A and B, includes improvements defined in the West Bay Park Water Access and ALEA grants and within

the scope of work to be defined by the Washington Department of Natural Resources for the removal of creosoted pilings. The final scope of Phase I improvements may be modified to comply with project permit requirements, available funding or other factors. Any modifications to Phase I by the City that affect the Rotary Point Project due to permitting requirements will be made after consultation between Rotary and the City. The City will hire professional consultants for project design and permitting and construction administration assistance. The City will bid and award the construction of Phase I components except for those Phase I components that will be provided by Rotary under this Agreement.

The City will coordinate the use of the City's Volunteers In Parks ("VIP") volunteers with Rotary to help with site clean up, planting and other projects that are approved by the City to be performed in addition to volunteer work on the Rotary Point project. Rotary will not allow VIP or Rotary members on the project site without either being supervised by Rotary or the City.

Rotary

Rotary agrees, along with other Rotary Clubs and volunteers, to donate labor, equipment and materials to complete the Project, which is expected to have a value of at least \$120,000, as previously committed as part of the Water Access grant application and as valued per the Inter-Agency for Outdoor Recreation's requirements and standards. Rotary will maintain all accounting records as required by the IAC and City. Rotary will submit all documentation required by IAC for the donations.

Insurance/Damages

Rotary will maintain insurance coverage for Rotary, its members and agents as set out in the Certificate of Liability Insurance attached hereto as Exhibit E. Certificates of Insurance must be provided to the City before Rotary members or agents may access the park property.

If Rotary contracts for work to be done on the park property, the contractor must be licensed and insured per City and State of Washington requirements. The Rotary contractor's insurance policies must include the City as an additional insured. Rotary's contractors shall carry Workers' compensation and employer's liability insurance in amounts sufficient under Washington law.

Rotary's contractors shall carry, as a minimum, the following insurance in such forms and with a carrier rated A.M. Best "A:VII."

Commercial General Liability Insurance. Commercial general liability insurance with limits of liability not less than \$1,000,000 per occurrence, and \$2,000,000 in the general aggregate, for bodily injury, including personal injury or death, products liability and property damage. The commercial general liability insurance shall also include the following coverage:

- A. Products and Completed Operations Liability;
- B. Automobile Liability, including coverage for owned, non-owned, leased, or hired vehicles;
- C. Stop Gap or Employers Contingent Liability.

Automobile Liability Insurance: Automobile liability insurance with a combined single limit of liability not less than \$1,000,000 for bodily injury (including personal injury or death) and property damage.

Professional Liability Insurance: If Rotary contracts for professional services, Rotary's contractors shall carry Professional Liability Insurance with limits of liability not less than \$1,000,000 per claim and \$1,000,000 policy aggregate limits, for damages sustained by reason of or in the course of operation under this Agreement, whether occurring by reason of acts, errors or omissions of the Contractor.

Certificates of Insurance. The City shall be named as additional insured on all such insurance policies, with the exception of professional liability and workers' compensation coverage(s). The insurance provided to the additional insured shall be primary. Rotary shall provide certificates of insurance and an Additional Insured endorsement, concurrent with the execution of this Agreement, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after forty-five (45) days prior written notice to the City. If Contractor's insurance policies are "claims made" or "claims paid", Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

Insurance Limits: The insurance limits stated above are not intended to be an indication of exposure nor are they limitations on indemnification.

Expiration/Termination of Insurance: 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.

Indemnification

Rotary

Rotary agrees to indemnify, defend and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees), arising from, resulting from, or connected with this Agreement to the extent solely caused by the negligent acts, errors or omissions of the Rotary, its members and agents, or by the Rotary's breach of this Agreement. Rotary waives any immunity that may be granted to it under the Washington

State Industrial Insurance Act, Title 51 RCW. Further, Rotary's 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 workers' compensation acts, disability benefit acts or any other benefits acts or programs, and the indemnification and agreement to defend and hold harmless contained herein expressly includes any and all claims by employees, subcontractors, and assignees of Rotary or for which Rotary would otherwise have immunity under the Worker's Compensation Act or any similar law in the absence of Rotary's waiver of such immunity herein. By executing the Contract, the Rotary acknowledges that the foregoing waiver has been mutually negotiated by the parties.

Notwithstanding any other provision of this Agreement, including the preceding paragraph, the City is aware that certain members of Rotary and other Olympia area Rotary clubs are providing professional design services to Rotary, and perhaps through Rotary to the City, on a pro bono basis as part of Rotary's contribution to the Rotary Point Project. The City agrees to hold Rotary, including any other participating Rotary club, its members, agents and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees), resulting directly from the professional design services provided under this Agreement.

City

The City agrees to indemnify, defend and hold Rotary, its officers, directors, members, partners, employees, contractors, volunteers and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees), arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees, its contractors or agents.

Bonding and Retainages

Rotary will not be required by the City to provide a construction bond or establish retainage for the Rotary Point Project. However, if Rotary, its members, volunteers, contractors or agents provide work unacceptable to the City, it is the Rotary's responsibility to bring work up to standards required by the City. Upon notice of non-conforming work, Rotary shall have a reasonable time in which to bring the work into compliance so long as it does not delay the remainder of the West Bay Park Project. Complaints concerning wages or other payments against Rotary are the sole responsibility of Rotary.

Term of Agreement

This Agreement will terminate upon completion of the Rotary Point Project to the reasonable satisfaction of the City. Attached as Exhibit C is the tentative schedule for the proposed West Bay Park improvements. The schedule will be updated through the implementation process as dates can be made more concrete. The City agrees to coordinate with Rotary on any schedule changes that affect the Project. The schedule will

be updated when permits are received and after a construction contract for the City's work is awarded. It is anticipated that design will be completed by December 2007. The target date for starting construction is February 2008. The parties understand that the Rotary Point Project may not be completed until spring of 2008.

Termination

The City maintains the right to terminate this Agreement if Rotary fails to comply with design, permitting, construction, accounting, safety or other project requirements as specified within this Agreement and project permits. Rotary may terminate this Agreement if the City does not meet its obligations under this Agreement. If either party believes the other party is not performing its obligations under this Agreement, prior to termination the party asserting non-performance shall notify the other party in writing delivered in person or by certified mail stating the grounds on which non-performance is claimed and allowing the other party thirty days to remedy any non-performance.

Requirements for Acceptance of Project by City

The City will inspect the Rotary Point Project prior to its acceptance by the City. If any components for which Rotary is responsible fail to pass inspection, Rotary is responsible for making the corrections within a reasonable time to an agreed upon schedule, so long as it does not delay the West Bay Park project. If the unacceptable work is not corrected, Rotary will be responsible for removing or correcting the unacceptable improvement within a reasonable time to an agreed upon schedule, so long as it does not delay the West Bay Park project. The City reserves the right to reject work performed by Rotary, its members, volunteers and contractors.

Conflict of Interest

No Rotary officer or member, other than contractors hired by Rotary, shall have any personal financial interest or gain, direct or indirect in this Agreement and Rotary will take appropriate steps to assure compliance.

Discrimination

There shall be no discrimination by Rotary or by its members, agents, contractors, volunteers or other representatives against any person because of sex, age, race, color, creed, national origin, marital status, veteran status, sexual orientation or the presence of any disability, including sensory, mental or physical handicaps. In the event of Rotary's noncompliance or refusal to comply with the above nondiscrimination provision, this Agreement may be rescinded, canceled, or terminated in whole or in part.

Fundraising/Revenues

The City, by the Olympia City Council, has approved Rotary selling engraved pavers to be used within the Rotary Point Project. The funds raised from the selling of these pavers

will be used to help fund Rotary's improvements within the Rotary Point Project. The location and installation of these pavers must be approved by the City in coordination with Rotary and comply with Americans with Disability Act requirements for accessibility.

Rotary may solicit donations for materials, labor and cash using the PowerPoint presentation approved by the City. Donation solicitations shall comply with all applicable city, state and federal requirements.

Rotary will be responsible for maintaining, repairing and replacing their bronze logo plaque in the Rotary Point overlook. If the plaque becomes damaged or unsafe and Rotary does not repair or replace it in a timely fashion, the City may remove the plaque and repair the site as needed.

Rotary will provide Olympia Parks with two dozen blank pavers that match the engraved pavers being used by Rotary. These blank pavers will be used as needed for maintenance to replace cracked, stolen or other potentially unsafe pavers. Engraved pavers will not be replaced by the City of Olympia with engraved replacements.

Park facilities receive considerable wear and tear, and public needs change so park facilities are not permanent. Rotary shall not commit to donors that their donation will exist in perpetuity within the park. It is the City's intention to maintain Rotary Point so that future generations will benefit from these generous donations but it is not agreeing that any particular donation will remain in perpetuity. The City agrees to use the name Rotary Point for the area of the Rotary Point Project for at least ten years, then so long as Rotary performs an annual maintenance project as described below and maintains the Rotary plaque.

The City has sole responsibility for the maintenance of the area within the Rotary Point Project. However, Rotary intends to perform at minimum one annual service project at Rotary Point, and, at Rotary's sole discretion, subsequent seasonal service projects, to help maintain Rotary Point. These service projects must be approved in advance by the City.

Organizing Volunteers

Rotary's work parties must be scheduled and approved in advance through the City's Project Manager. All non-Rotary participants in work parties will be required to sign the City's Volunteer Release Form and comply with the City's volunteer policies. Children under 18 must have a guardian sign the Volunteer Release Form, cannot volunteer on the site while any heavy equipment is being operated and must be supervised at all times by an adult. The City's Volunteer in Parks Coordinator will coordinate with Rotary to help solicit volunteers and advertise Rotary Point volunteer projects if so requested by Rotary. Rotary will be responsible for supervising its work parties, assuring safe environment and practices and complying with approved project plans and permits. With prior City

approval, Rotary may also help and recruit volunteer work projects outside of the Rotary Point area. Volunteer projects outside of the Rotary Point Project area will be supervised by the City's Volunteer in Parks Coordinator or other City representatives.

Granting Permits for Use of Rotary Point

Rotary does not have permission and has no authority to determine how Rotary Point may be used once it is accepted by the City or in the future. Rotary cannot directly authorize permission for special events or for improvements or changes to the park property.

Maintenance During Construction

During construction of the Rotary Point Project, Rotary will be responsible for maintaining a portable toilet and construction dumpster, as well as keeping driveways and West Bay Drive free of any mud and debris resulting from Rotary's actions per project permit requirements. Rotary will be responsible for picking up and properly disposing of all of its litter and debris within the Project boundaries due to its activities.

Integrated Pest Management

Rotary may not use any fertilizer, herbicides or insecticides at Rotary Point without advanced approval by the City. All Rotary actions shall comply with the Olympia Park's Integrated Pest Management Plan.

City Will Provide

Use of City Facilities

Rotary's work area will be limited as shown on drawings approved by the City. In addition to the Rotary Point Project area, the City will provide an adjacent staging area for storing materials and equipment and an area to park workers' vehicles. Rotary will be responsible for securing its work area by the use of construction chain link fencing, orange web fencing and signage. Rotary will be responsible for securing its materials and equipment. Any damage done by its equipment and actions will be Rotary's responsibility to repair. City Permits will require a Traffic Control Plan for construction traffic entering and leaving West Bay Park. In addition, a Traffic Control Plan for circulation within the park will be prepared by the City in consultation with Rotary. The City is responsible for maintaining reasonable access to the Rotary Point Project area for Rotary's work on the Project.

Capital Funding

The City will design and construct all components outside of the Rotary Point Project area as shown on the attached drawing, Exhibit A. This includes the improvements within the Water Access grant from the West Bay Trail to the west, all of the ALEA grant improvements, the driveway and parking area improvements as shown on the approved conceptual plan and any street frontage or other improvements required by project

permits. No City funding will be used for improvements within the Rotary Point area with the exception of the interpretive sign design, fabrication and installation. City funds will be used for West Bay Park Phase I project management, permitting and development fees and coordination of design teams and construction.

City Review and Authority

Permits

The City will administer permitting for all West Bay Park Phase I components including the Rotary Point Project. A Rotary representative will assist in the permitting processes. Rotary will provide to the City required drawings, permits and other information necessary for permits that encompass the Rotary Point Project. Rotary will be responsible for complying with all permit requirements. Rotary may at its sole election terminate this Agreement if permit requirements require Rotary to contribute in excess of \$120,000 to the Project

Design

Rotary will have professionally designed all of the drawings listed as their responsibility on the attached Master Index of Construction Drawings, Exhibit D. The drawings must be stamped by the appropriate licensed professional engineer or landscape architect. Rotary will make its best efforts to assure the drawings comply with all city, state and federal requirements including Olympia's Public Works Development Standards and Water Resources Best Management Practices for Construction Sites.

The City of Olympia Parks, Arts and Recreation Department (OPARD) will review and approve all of the Rotary drawings and specifications in advance of their submittal for permits and approval for construction. The Rotary drawings will be drafted using OPARD provided base sheets and topographic survey information in drafting standards and formats specified by OPARD. The Rotary components will be submitted per agreed upon schedule for OPARD review and approval at 30%, 60% and 90% completion and as needed for project permitting and related meetings if the latter are not able to occur at the standard 30/60/90 review phases.

Construction

The City is the owner and controller of West Bay Park, including Rotary Point, and will become the owner of all improvements donated by Rotary upon their acceptance by the City.

Rotary will designate a Project Manager for the Rotary Point Project. This person will be responsible for all Rotary Point Project design and construction activities conducted by Rotary. Rotary's Project Manager will coordinate directly with the City's Project Manager. No Rotary sponsored volunteers may work on park property without the supervision of a skilled professional to be scheduled and supplied by Rotary.

Rotary is responsible for maintaining a safe work site and safe working practices within the Rotary Point Project in compliance with all labor practices and public health and safety standards. Safety accidents and environmental spills and hazards shall be immediately reported to the City's Project Manager and in his or her absence the Parks Department Director or Associate Directors.

Documents

All Rotary improvements shall comply with permit requirements. All work shall be based on approved Permit Set of construction documents. A set of these drawings and a copy of project permits and inspections shall be kept on site during all work. Rotary will provide the City with a set of as-built drawings for the Rotary Point Project within 30 days of completion of the Project.

Inspections

Rotary will be responsible for scheduling all required inspections including compaction, concrete, asphalt and irrigation tests for the Rotary Point Project. City park, development and code enforcement inspectors will be allowed on site all times and will be given prior notice of any such inspections or tests. Copies of all inspection or test reports shall be provided to the City's Project Manager as soon as they are available.

Hours

The City allows construction from 7 a.m. – 7 p.m. seven days a week. Hours and season of work may be modified by permits.

Park Policies, Activities and Behaviors

Rotary members, contractors and VIP volunteers working on the Rotary Point Project are required to comply with all City ordinances including those specific to park property. Alcoholic beverages and pets are prohibited. No overnight camping or firearms are permitted. Temporary vehicle parking and driving routes will be established for project construction. During construction, the park will remain closed to the general public except for those who are approved Rotary volunteers.

Park Opening, Dedication Ceremony and Celebration

The City will co-host with Rotary the Rotary Point park opening, dedication ceremony and celebration. The event will occur on a mutually approved date.

Public Information and Media

Rotary shall provide the City, for review and approval, advanced copies of all press releases, media publications and public notices that result from Rotary fundraising and

implementation activities for Rotary Point with the intention of issuing joint communications.

Dispute Resolution

If a dispute arises out of this Agreement or claimed breach thereof, or relates to this Agreement, and if the parties cannot negotiate a resolution, the parties agree to promptly submit the matter to the Director of the Olympia Parks, Arts and Recreation Department for the City's final decision.

Notices

All notices required to be given under this Agreement shall be sent to the respective Project Managers:

Rotary	City of Olympia
<u>Bob Wubben</u> Name	<u>Julie McQuary</u> Name
<u>HDR Engineering</u> Address	<u>Olympia Parks</u> Address
<u>626 Columbia St. NW 98501</u>	<u>222 Columbia St. NW 98501</u>
<u>(360) 570-4429</u> Tel. No.	<u>360-709-2700</u> Tel. No.
<u>(360) 360-280-9100</u> <u>wob.wubben@hdrinc.com</u>	<u>jmquary@ci.olympia.wa.us</u>

Approval

By signing below, the parties represent they have the authority to execute this Agreement on behalf of their organizations.

The Olympia Rotary Club	City of Olympia
<u>All-T. Mill</u> Name	<u>Mark Smith</u> Name
<u>President</u> Position	<u>Mayor</u> Position
<u>6/30/07</u> Date	<u>6-26-07</u> Date

APPROVED AS TO FORM:

Donna C. [Signature]
City Attorney

Attachments: Exhibit A: West Bay Phase I Conceptual Design
Exhibit B: West Bay Rotary Point Conceptual Design
Exhibit C: Proposed Project Schedule
Exhibit D: Master Index of Construction Drawings
Exhibit E: Rotary Certificate of Insurance