

AGREEMENT FOR DOWNTOWN ROTARY CLUB OF RENO SCULPTURE GARDEN IN BICENTENNIAL PARK

THIS AGREEMENT is made and entered into this _____ day of _____, 2016, by and between the CITY OF RENO ("City"), a municipal corporation, and Rotary Club of Reno ("Rotary"), for sponsorship of the sculpture garden in Bicentennial Park.

RECITALS

WHEREAS, Rotary is celebrating its 100th anniversary in 2016; and

WHEREAS, Rotary desires to donate goods and services in an amount not to exceed \$80,000 for the Rotary Club of Reno Sculpture Garden in Bicentennial Park; and

WHEREAS, Rotary desires to serve on the selection panel of the Rotary Club of Reno Sculpture Garden in Bicentennial Park, which will feature eight (8) sculptures that will rotate on a yearly basis.

NOW, THEREFORE, for good and valuable consideration and subject to all terms and conditions of this Agreement, City and Rotary hereby agree as follows:

SECTION 1: DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 **CITY:** City of Reno, P.O. Box 1900, Reno, NV 89505 (Street Address: One E. First Street, Reno, NV 89501). Primary Contact: Andy Bass, Director of Parks, Recreation, and Community Services at (775) 334-2260.
- 1.2 **ROTARY:** Rotary Club of Reno, Downtown Reno Rotary, P. O. Box 1750, Reno, NV 89505
- 1.3 **ROTARY CLUB OF RENO SCULPTURE GARDEN IN BICENTENNIAL PARK :** Eight (8) sculptures placed on seven (7) pedestals and one at grade footing, on a yearly rotating basis within Bicentennial Park, located at 10 Ralston Street, Reno, Nevada 89503.

SECTION 2: RESPONSIBILITIES OF ROTARY

- 2.1 Rotary is solely responsible for all costs, monetary and donated, associated with the installation of the Rotary Club of Reno Sculpture Garden in Bicentennial Park, not to exceed \$80,000.

- 2.2 Rotary will have up to three (3) of its members serve on the selection panel to choose the sculptures that will be displayed at the Rotary Club of Reno Sculpture Garden in Bicentennial Park on a yearly-basis.

SECTION 3: RESPONSIBILITIES OF CITY

- 3.1 The City will oversee the installation of the Rotary Club of Reno Sculpture Garden in Bicentennial Park, and the City shall have final approval of all work done.
- 3.2 City shall provide seven (7) pedestals designed by an artist and curate eight (8) sculptures to be displayed annually in the Rotary Club of Reno Sculpture Garden in Bicentennial Park. City shall remove any or all of the eight (8) sculptures, in its sole discretion as necessary to ensure public safety.

SECTION 4: TERMINATION

- 4.1 This Agreement may be terminated unilaterally by either party for any reason upon providing thirty (30) days written notice to the other party.

SECTION 5: INSURANCE AND INDEMNIFICATION

- 5.1 **Insurance:** The parties agree that the value of the eight (8) sculptures for the entire term of this agreement shall be a sum not to exceed \$80,000. City maintains property insurance, and agrees to insure damage to the eight (8) sculptures, with maximum exposure limits equal to the value of the eight (8) sculptures as set forth in this paragraph. The City's total maximum exposure to the eight (8) sculptures for claims, demands, losses and damages arising out of or related to breach of this Agreement or damage to the eight (8) sculptures, including attorney's fees and costs, shall not exceed the value of the eight (8) sculptures as set forth in this paragraph. City retains all immunities, defenses and tort limitations, including those set forth in Chapter 41 of the Nevada Revised Statutes, or otherwise provided in law and equity.
- 5.2 **Hold harmless:** To the fullest extent permitted by law, the City shall hold harmless Rotary, including its directors, officers, employees, agents, volunteers, and representatives, from and against all claims, damages, losses, and expenses, including, but not limited to reasonable attorney's fees, arising out of or resulting from any act, conduct, omission, negligence, misconduct or unlawful act (or act contrary to any applicable governmental order or regulation) of City, its owners, employees, contractors, subcontractors, agents or representatives in complying with this Agreement. The foregoing includes, without limitation, injury

or damage to the person or property of Rotary, or any third party, whether or not subject to any policy of insurance. In addition, Rotary understands that the insurance coverage obtained by City in accordance with paragraph 5.1, may have exclusions for damages pertaining to occurrences such as war, nuclear, or pollution, and that such insurance coverage may provide for certain deductibles and the timing to repair damages may be dependent upon the ability of City to fund such deductibles. Rotary agrees that the City shall not be responsible for, and holds the City harmless from, any claims, demands, losses, and damages of any kind including attorney's fees, costs, not covered by the insurance policy, and any damages of any kind, which in aggregate exceed the value of the eight (8) sculptures.

SECTION 6: MISCELLANEOUS PROVISIONS

- 6.1 Compliance with Laws:** The parties to this Agreement will perform their obligations under this Agreement in compliance with current Federal, State and local laws and ordinances.
- 6.2 Jurisdiction:** This Agreement shall be administered and interpreted under the laws of the State of Nevada. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the district courts of the State of Nevada, County of Washoe.
- 6.3 Dispute Resolution:** If both parties agree, all claims, counterclaims, disputes and other matters in question between City and Rotary arising out of, or relating to, this contract or breach of it, unless otherwise settled, may be mediated before initiation of a judicial action. The parties will attempt to mutually agree to the appointment of one mediator. If the parties cannot agree to one mediator, each party shall select one mediator and the two mediators will appoint a third mediator. The parties agree to split the mediator(s) fees and expenses. Each party shall bear their own attorney's fees and other costs incurred for the mediation.
- 6.4 Dissolution:** The dissolution of Rotary shall not terminate this Agreement. This Agreement shall survive Rotary's dissolution, and shall survive and bind Rotary's successor.
- 6.5 Failure to Enforce:** The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the

provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

- 6.6 Attorney's Fees and Costs:** Within the limitations set forth in this Agreement, in the event either party brings any action to enforce any of the provisions of this Agreement or is required to defend any action brought by the other party with respect to this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party reimbursement for the prevailing party's actual costs in connection with such action, including reasonable attorney's fees.
- 6.7 Warranties of Title:** Rotary warrants that it has the authority to provide the rights given to the City pursuant to this Agreement.
- 6.8 Assignment:** This Agreement shall not be assigned or transferred without prior written approval of all parties.
- 6.9 Modification of the Agreement:** No modification or amendment of the terms of this Agreement shall be effective unless written and signed by authorized representatives of the parties hereto.
- 6.10 Communication:** All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery by registered or certified mail, return receipt requested, postage prepaid, as follows:

City: City of Reno
Attention: Director of Parks, Recreation, and Community Services
P.O. Box 1900
Reno, Nevada 89505

Rotary: Rotary Club of Reno (Downtown)
P. O. Box 1750
Reno, Nevada 89505

A change in the designation of the person or address to which requests, notices and reports shall be delivered is effective when the other party has received notice of the change by certified mail.

- 6.11 Joint Preparation:** This Agreement shall not be construed against the party preparing it, but shall be construed as if all parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one party.

6.12 Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement to be effective as of the effective date.

6.13 Electronic Signature: An electronic or facsimile signature on this Agreement shall be valid for all purposes.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE FIRST WRITTEN ABOVE.

CITY:

ROTARY:

BY: _____
Hillary L. Schieve, Mayor

Rotary's Representative

ATTEST:

APPROVED AS TO FORM AND CONTENT

BY: _____
Ashley D. Turney
Reno City Clerk

BY: _____
Deputy City Attorney