

**AGREEMENT BETWEEN CITY OF ALAMEDA AND
ROTARY CLUB OF ALAMEDA REGARDING DONATION OF FUNDS FOR THE PICNIC PAVILION
AT JEAN SWEENEY OPEN SPACE PARK**

This Agreement is entered into this 21st day of March, 2017 by and between the **CITY OF ALAMEDA**, municipal corporation (City) and the **ROTARY CLUB OF ALAMEDA**, a California Community Service Club, PO Box 2403 Alameda, CA 94501 (Rotary).

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City of Alameda.
- B. Rotary is a service organization that brings together members from business and professional organizations committed to enhancing the community and improving lives.
- C. Rotary desires to donate funds to City for the Picnic Pavilion (Picnic Pavilion) at the Jean Sweeney Open Space Park (Jean Sweeney Park).
- D. The City is committed to the construction of the Jean Sweeney Park for the benefit of the entire Alameda community.
- E. City and Rotary desire to enter into an agreement for the donation of funds by Rotary for the City to construct the Picnic Pavilion at the Jean Sweeney Park and to allow its use by Rotary in consideration of its donation.

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. TERM FOR DONATION PAYMENT

The term of this Agreement shall commence on June 1, 2017 and shall continue until Rotary has made all of its donations or this Agreement is terminated as provided in this Agreement..

2. DONATION CONDITIONS

- A. Rotary shall donate \$100,000 to the City toward the construction of the Picnic Pavilion at the Park. Rotary shall make the donation over a five year period in equal installments of \$20,000, with the first installment to be made by June 30, 2017 and each subsequent installment to be made by June 30 of each thereafter until Rotary has donated the full \$100,000.
- B. Rotary shall make its donation payable to the City of Alameda as follows:

Attn: Recreation and Parks Director
2226 Santa Clara Avenue
Alameda, CA 94501

C. ROTARY USE/RECOGNITION

1. Because of its donation, Rotary shall be publicly recognized by City through the installation of a recognition feature at the Picnic Pavilion (the Recognition Feature). . Rotary shall appoint a committee to work directly with the City's Recreation and Parks Director for the design of the Recognition Feature. Following the City Council's approval of the Recognition Feature, City shall purchase and construct the Recognition Feature.
2. Subject to City Council approval, the Picnic Pavilion shall be named the Alameda Rotary Pavilion on the Recognition Feature and all other related publications.
3. Rotary shall be given the use of the area within the Picnic Pavilion for Rotary sponsored events at no charge at least three but no more than six times each calendar year. Rotary must complete and submit an Alameda Recreation and Parks Department reservation form in order to reserve the area within the Picnic Pavilion and all standard Department policies and procedures will apply except the City will waive the rental use fees for the Rotary sponsored events referenced in the previous sentence, .
4. City shall coordinate with Rotary and host a red ribbon cutting opening ceremony for the Picnic Pavilion.

D. CONSTRUCTION AND MAINTENANCE. The City shall have the sole responsibility to construct and maintain the Picnic Pavilion and Rotary shall have no obligation, other than its donation, for labor and/or materials toward the construction or maintenance of the Picnic Pavilion.

3. **NON-DISCRIMINATION**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Rotary agrees that harassment and discrimination directed towards a job applicant, a City employee, or a citizen by Rotary or any member thereof on the basis of race, religion, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Rotary further agrees that any and all violations of this provision by Rotary shall constitute a material breach of this Agreement.

4. **TERMINATION**

A. TERMINATION. This Agreement shall terminate if either of the following occur: (1) Rotary fails to make an installment donation as provided herein or (2) the Alameda City Council determines, in its sole discretion, that Rotary has engaged in activities that are inconsistent

with City values or are inconsistent with the sponsorship of events, activities, or programs conducted at the Park. If this Agreement is terminated, City shall retain any donations made by Rotary prior to the termination of the Agreement and City may remove, without Rotary's permission or consent and without liability to the City, the Recognition Feature at the Picnic Pavilion.

B. REMOVAL OF RECOGNITION FEATURE. After Rotary has made all of its donation as provided in this Agreement, at any time if the Alameda City Council determines, in its sole discretion, that Rotary has engaged in activities that are inconsistent with City values or are inconsistent with the sponsorship of events, activities or programs conducted at the Park, the City may remove, without Rotary's permission or consent and without liability to the City, the Recognition Feature at the Picnic Pavilion.

5. NOTICES

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and shall be deemed served and delivered personally to or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered or certified mail, addressed as hereinafter set forth.

All notices, demands, requests or approvals from Rotary to City shall be addressed to:

City of Alameda Recreation and Parks Department
2226 Santa Clara Avenue
Alameda, CA 94501
Attention: Recreation and Parks Director

All notices, demands, requests or approvals from City to Rotary shall be addressed to:

Rotary Club of Alameda
PO Box 2403
Alameda, CA 94501
Attention: President

6. COMPLIANCES:

Rotary shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.

7. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the parties are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

8. ADVERTISEMENT

Rotary shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards or any kind on the Picnic Pavilion unless prior written approval has been secured from City to do otherwise.

9. NO THIRD PARTY BENEFICIARY

This Agreement is by and between the parties named herein and no third party is intended either by expression or implication to be benefitted by this Agreement.

10. ATTORNEYS' FEES

In the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement or the breach, interpretation or enforcement of same, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' free and costs.

11. MODIFICATION

This Agreement may only be modified in writing by mutual agreement of the parties.

12. INVALID TERM

In the event that any provision of this Agreement shall in any respect be declared invalid, illegal, or unenforceable, such invalidity, legality or unenforceability shall not affect any other term or condition of this Agreement, and this Agreement shall be interpreted as though such illegal, unenforceable or invalid term or condition was not part hereof.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and there are no understandings, agreements, representations, or warranties, express or implied not specified in the Agreement.

14. AUTHORIZATION

Each person executing this Agreement represents that the party on whose behalf the person is executing the Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on behalf of such party.

Signatures on next page

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first hereinabove written.

ROTARY CLUB OF ALAMEDA
California Community Service Club

By _____

Title _____

By _____

Title _____

By _____

Title _____

CITY OF ALAMEDA
A Municipal Corporation

By _____

Title _____

RECOMMENDED FOR APPROVAL:

By _____

Title _____

APPROVED AS TO FORM:
City Attorney

Title _____