

## **FOUNDATION USE AGREEMENT**

This FOUNDATION USE AGREEMENT (“Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) by and between Rotary District 5320 Foundation, a California nonprofit corporation (the “Foundation”) and The Rotary Club of \_\_\_\_\_ (“Club”).

### **RECITALS**

- A. The Foundation is a California nonprofit organization that operates in a manner consistent with the goals and objectives of Rotary International and is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code (IRC);
- B. The Club represents that it is a California nonprofit organization that is exempt from income taxes under IRC Section 501(c)(4) as a social welfare organization, and is a Rotary club in good standing with Rotary International and Rotary District 5320;
- C. The Club desires to raise money by soliciting donations from the public for charitable purposes consistent with IRC Section 501(c)(3) and consistent with the goals and objectives of Rotary International, however, donations to The Club are not tax deductible for donors;
- D. The Foundation is willing to accept donations on behalf of the Club for IRC Section 501(c)(3) purposes and activities to be carried out by the Club, and will offer tax deductibility for such donations by donors to the Foundation under the terms and conditions of this Agreement;
- E. The Foundation will make disbursements for IRC Section 501(c)(3) purposes and activities to or at the direction of the Club, derived from the donations solicited by the Club, less certain fees set forth in this Agreement, and subject to the terms and conditions of this Agreement;
- F. The parties hereto recognize that every effort shall be made to safeguard the integrity of the Foundation’s tax status under IRC Section 501(c)(3) and the Club has agreed that any funds received from the Foundation will be subject to strict rules regarding the use of such funds and that they only be used to carry out IRC Section 501(c)(3) purposes and activities.

## AGREEMENT

### **Article 1. Purpose**

The purpose of this Agreement is to set forth the terms and conditions under which the Foundation will accept donations of funds to be used by the Club for IRC Section 501(c)(3) purposes and activities, provide donors with appropriate documentation of their donations, and the terms and conditions under which the Foundation will disburse funds to or at the direction of the Club.

### **Article 2. Donated Funds and Disbursements**

The Foundation will receive donations from donors, identified for use by the Club for IRC Section 501(c)(3) purposes and activities, and will thereafter make periodic disbursements of those funds to or at the direction of the Club. The disbursements are anticipated to equal the amount of the donation(s) received by Foundation on behalf of the Club during the specific time period, less fees as set forth in Appendix "A" attached to and made a part of this Agreement.

### **Article 3. Agreement Term**

This Agreement shall commence on the Effective Date and shall continue until and unless terminated by either party pursuant to Article 11.

### **Article 4. Representations by the Club**

- 4.1 The Club confirms that it is a California nonprofit organization that is exempt from income taxes under IRC Section 501(c)(4) as a social welfare organization.
- 4.2 The Club confirms that it is a Rotary club in good standing with Rotary International and District 5320 and that it operates in a manner consistent with the goals and objectives of Rotary International.
- 4.3 The Club confirms that all disbursements received from the Foundation under this Agreement, and any income earned on those disbursements will be spent solely for purposes consistent with the strict rules governing IRC Section 501(c)(3) organizations including prohibitions on political campaign activities and limitations on lobbying.
- 4.4 The Club confirms that individuals connected with the Club shall not receive more than an incidental benefit from such funds disbursed to the Club from the Foundation, and shall not receive any goods or services pursuant to or in connection with funds disbursed to the Club from the Foundation, under this Agreement.
- 4.5 The Club confirms that funds disbursed from the Foundation will not be used to satisfy the payment of any pre-existing pledge or other financial obligation.
- 4.6 The Club confirms that it will comply with the goals and objectives of Rotary International and maintain its good standing with Rotary International and District 5320 at all times during the term of this Agreement.

**Article 5. Funds Requests, Record Keeping, and Reporting by Rotary**

- 5.1 To obtain disbursements from the Foundation , the Club shall make a written request for all, or part of funds previously donated to the Foundation and deposited on its behalf and held by the Foundation, to the District Administrator for Rotary International District 5320 (the “District”). The written request will include an affirmation that the Club is in good standing with the District and Rotary International and that the Club is current on all required filings with State and Federal authorities, including taxing authorities. The written request will state the purposes and activities for which the requested funds will be used and will affirm that the funds will be used for IRC Section 501(c)(3) tax-exempt activities and purposes.
- 5.2. The Club will keep adequate records to document the expenditure of all disbursements received from the Foundation. Records will include bookkeeping, bank statements, receipts, photographs, and other written documents to meet audit requirements. Current financial statements and records on such disbursements will be due with each quarterly and annual report.
- 5.3. The Club will provide to the Foundation quarterly and annual reports throughout the term of this Agreement. These reports will include financial records relating to the activities supported by the disbursements, describing in detail how such funds have been spent and the charitable purposes and activities accomplished. The Club will continue to provide the required reports, with supporting documents to the Foundation, during the term of this Agreement and as necessary, after the Agreement is terminated. The reports are intended to allow the Foundation to confirm that the disbursed funds are used for IRC Section 501(c)(3) tax-exempt activities and purposes.

**Article 6. Record Keeping, Reporting, and Funds Control by the Foundation**

- 6.1 The Foundation will prepare and maintain records of all donors and donations received pursuant to this Agreement and send appropriate written acknowledgements to donors regarding their donations pursuant to this Agreement.
- 6.2 The Foundation and its board have a fiduciary responsibility and legal obligation to ensure that funds received under this Agreement and disbursements made to the Club are used solely in furtherance of IRC Section 501(c)(3) activities and purposes. The Foundation has the right to limit the disbursement of funds and provide written notice to the Club if any use of the funds is determined by the Foundation to be outside the permitted scope of IRC Section 501(c)(3) activities and purposes.

**Article 7. Restrictions on Use of Disbursed Funds**

- 7.1 The Club agrees and confirms that funds disbursed to it or at its direction from the Foundation shall only be used to carry out IRC Section 501(c)(3) purposes and activities.
- 7.2 The Club agrees and confirms that no part of the funds disbursed shall be used to carry on propaganda or otherwise attempt to influence legislation, or to attempt to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive.
- 7.3 The Club agrees and confirms that no part of the disbursed funds shall be used for purposes other than religious, charitable, scientific, literary, or educational purposes or the prevention of cruelty to children or animals within the meaning of IRC Section 170(c)(2)(B).
- 7.4 The Club shall promptly return to the Foundation any portion of the disbursed funds which for any reason is not used exclusively in compliance with the strict rules governing IRC Section 501(c)(3) organizations regarding the use of funds.

**Article 8. Right to Audit**

The Club agrees that the Foundation has the unconditional right to conduct audits at any time to verify the information the Club provides through written reports, financial records, and other documentation. Such audits may be conducted onsite, with the decision to do so within the sole and exclusive right of the Foundation.

**Article 9. Hold Harmless and Indemnity**

The Club irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Foundation, its officers, directors, employees, volunteers and agents, from and against any and all third party claims, liabilities, losses and expenses (including attorneys fees) directly, indirectly, wholly or partially arising from or in connection with an alleged breach of this Agreement by, or an alleged negligent act or omission of, the Club, its officers, directors, employees, agents, volunteers or independent contractors, in performing its obligations under this Agreement.

**Article 10. Termination and Default**

- 10.1 This Agreement shall remain in full force and effect until terminated, with or without cause.
- 10.2 This Agreement may be terminated, without cause, by either party upon sixty (60) days prior written notice, which notice shall be delivered by hand or by certified mail to the address set forth in Article 11.
- 10.3 This Agreement may be terminated for cause in the event either party believes the other party has materially breached the Agreement, due to but not limited to, an Event of Default, by one party giving the other party notice of termination, specifying the basis for

the termination. The receiving party shall have fourteen (14) days to cure the breach, or the Agreement shall automatically terminate, without further notice.

- 10.4 An “Event of Default” shall include but not be limited to the following: (i) either party declares bankruptcy or becomes subject to legal proceedings or action by any litigant, regulatory agency or court that relates to insolvency; (ii) either party makes an assignment for the benefit of its creditors or enters into an agreement for the readjustment of its debts and obligations; (iii) either party becomes involved in any proceeding or matter that could negatively impact the reputation or goodwill of the other party; (iv) either party fails to adhere to the terms and/or conditions of this Agreement; (v) the Club is no longer in good standing with Rotary International or District 5320.
- 10.5 Upon termination of this Agreement by the Foundation on the basis that the Club is no longer in good standing with Rotary International or District 5320, the Foundation shall have the right to return all funds received on behalf of the Club to donors, without any further responsibility or liability owing to the Club.
- 10.6 Articles 4, 5, 6, 7, 8, 9 and 10 shall survive termination of this Agreement for as long as the Foundation holds funds on behalf of the Club.

#### **Article 11. General Provisions**

- 11.1 Entire Agreement; Amendment; Waiver. This Agreement expresses the entire agreement and understanding between the parties respecting the subject matter hereof and shall not be modified except by a writing signed by the parties. Any failure to enforce any provision hereof shall not constitute a waiver thereof or any other provision hereof.
- 11.2 Assignment; Successors. None of the parties to this Agreement may assign this Agreement, in whole or in part, nor any interest herein (including any assignment by operation of law) without the prior written consent of the other party. This Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.
- 11.3 Governing Law. This Agreement shall be governed by the laws of the State of California.
- 11.4 Remedies. The parties agree that any violation or threatened violation of this Agreement by the Club may cause irreparable injury to the Foundation for which money damages would not be a sufficient remedy, and that the Foundation shall be entitled to obtain equitable relief, including injunction and specific performance. The remedies described hereunder shall be in addition to any other legal remedies available at law or equity.
- 11.5 Due Authorization. The persons executing this Agreement for and on behalf of the parties hereto represent that they are duly authorized to do so for and on behalf of their respective principals.
- 11.7 Attorney’s Fees. If any legal or equitable proceeding is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover actual

attorney's fees and costs which may be determined by the court in the same action or in a separate action brought for that purpose.

11.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

11.9 Notices. Notices to each party shall be given at the following address:

To Rotary District 5320 Foundation:

District Administrator

1619 N. Brian St., Suite B

Orange, CA 92867

To the Club:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year noted below.

Rotary District 5320 Foundation

By:

\_\_\_\_\_

Name

Date: \_\_\_\_\_

The Rotary Club of \_\_\_\_\_

By:

\_\_\_\_\_

Name

Date: \_\_\_\_\_

**Appendix "A"**

The Foundation will charge the Club the following fees:

Start Up Fees:	\$100.00 plus 2.5% of the amounts on deposit, subject to a minimum fee of \$50.00 and a maximum fee of \$500.00 for year one.
Fees After Year One:	2.5% of the amounts on deposit subject to a \$50.00 minimum and a \$500.00 maximum

Fees will be assessed biannually on December 31 and June 30 of each year.

Fees may be deducted from amounts on deposit with the Foundation pursuant to this Agreement.

The Foundation may increase these fees upon sixty (60) days' written notice to the Club.