WILCOX PARK SHELTER DONATION AGREEMENT

THIS DONATION AGREEMENT (this “Agreement”) is made this _____ day of ________, 2007, by and between the WILCOX LOVING TRUST (“Donor”) and the CITY OF LYNNWOOD, WASHINGTON, a municipal corporation (the “City”).

Recitals

A. The City owns a public park located at 5215 196th Street S.W., Lynnwood Washington, called “Wilcox Park” (the “Park”).

B. Donor desires to donate to the City a picnic shelter and related amenities for the Park, as set forth more fully below (the “Donation”). The City desires to accept such donation from Donor.

C. The parties desire to set forth the terms and conditions of the Donation in this Agreement.

NOW THEREFORE, for and in good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Donation. Donor agrees to donate to the City, and the City agrees to accept from Donor, a picnic shelter and related amenities to be constructed upon an area within the Park to be mutually selected by Donor and the City. The Donation shall consist of the following: (i) a Gothic Arch Picnic Shelter approximately 24’ x 36’ in dimension; (ii) an asphalt parking area adjacent to the shelter, in an area to be mutually selected by Donor and the City, with 11 parking stalls and 2 handicapped parking stalls, to include all necessary curbing and striping services; (iii) a 6’ x 100’ concrete walk connecting the parking area to the shelter; (iv) a 44’ x 56’ concrete pad necessary to support the shelter; and (v) a plaque naming the shelter and detailing the Donation.

Donor shall provide all materials, labor and services in connection with the Donation, except that the City shall assist Donor, at no cost to Donor, with the initial site plan and grading activities necessary to support the Donation. The parties shall mutually determine a construction schedule for the Donation, which Donor will endeavor to follow to the best of its ability. Donor shall have the discretion to select all materials and designs associated with the Donation; provided that Donor shall satisfy all applicable federal, state and local laws and regulations pertaining to the design and construction of the shelter and related amenities; and provided, further, that the final plans for the shelter and related amenities, including the contents of the plaque, shall be subject to the City’s approval, which approval shall not be unreasonably withheld, conditioned or delayed. Upon final approval by the City, Donor shall promptly undertake construction of the Donation and diligently pursue the completion thereof. Donor shall restore any areas of the Park disturbed by Donor’s construction activities to substantially similar condition as existed prior to such construction.

2. Value of Donation. The parties agree that a reasonable estimate of the total value of the Donation, including the donated materials, labor and services, is ONE HUNDRED THOUSAND
DOLLARS AND NO/100THS ($100,000.00). If Donor elects to claim tax benefits associated with the Donation, the City agrees, upon request, to provide Donor reasonable written verification of the City’s receipt of the Donation and the value thereof; provided, that the City makes no representations, warranties or guarantees relating to the tax implications of such Donation.

3. **Insurance.** At all times during the planning and construction phases of the Donation, Donor shall maintain and keep in force the following insurance policies against claims for injuries to person (including death) or damage to property arising out of or in connection with the planning or construction of the Donation by Donor, its employees, subcontractors and agents:

3.1 Automobile Liability Insurance with limits no less than $1,000,000.00 combined single limit per accident for bodily injury and property damage.

3.2 Commercial General Liability Insurance written on an occurrence basis with limits no less than $1,000,000.00 combined single limit per occurrence and $2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion; collapse and underground (XCU) if applicable, and employer’s liability.

3.3 Professional Liability Insurance with limits no less than $1,000,000.00 limit per occurrence.

Donor shall provide evidence of such insurance by submitting an insurance certificate provided on a standard “Accord” or comparable form.

4. **Indemnification.**

4.1 **By Donor.** Donor shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents (collectively, the “Indemnified Parties”) from any and all costs, claims, liabilities, judgments or awards of damages, including attorney’s fees (collectively, the “Claims”) arising out of or in any way resulting from Donor’s and/or Donor’s officers’, agents’, employees’ and subcontractors’ performance of this Agreement, except that the City shall be liable for any Claim(s) caused solely by the negligence or willful misconduct of the Indemnified Parties. The foregoing duty is specifically and expressly intended to constitute a waiver of Donor’s immunity under Washington’s Industrial Insurance Act, RCW Title 51, as respects the City with a full and complete indemnity and defense of claims made by Donor’s employees. The parties acknowledge that these provisions were mutually negotiated upon by them.

4.2 **By the City.** The City shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents (collectively, the “Indemnified Parties”) from any and all costs, claims, liabilities, judgments or awards of damages, including attorney’s fees (collectively, the “Claims”) arising out of our in any way resulting from the City’s and/or the City’s officers’, agents’, employees’ and subcontractors’ performance of this Agreement, except that Donor shall be liable for any Claim(s) caused solely by the negligence or willful misconduct of the Indemnified Parties. The foregoing duty is specifically and expressly intended to constitute a
waiver of the City’s immunity under Washington’s Industrial Insurance Act, RCW Title 51, as respects Donor with a full and complete indemnity and defense of claims made by the City’s employees. The parties acknowledge that these provisions were mutually negotiated upon by them.

5. **No Discrimination.** Donor shall not discriminate against any employee, applicant for employment, or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same instrument.

7. **Governing Law.** This Agreement is governed by and shall be construed according to the laws of the State of Washington. Venue for any dispute arising hereunder shall be Snohomish County, Washington.

8. **Binding Effect.** This Agreement is binding on the City, Donor, and their respective successors, assigns and legal representatives.

9. **Assignment.** This Agreement may not be assigned without the express written consent of the parties, which consent shall not be unreasonably withheld.

10. **Entire Agreement; Amendment.** This Agreement sets forth the final and entire Agreement between the parties hereto and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. No amendment or modification of this Agreement will be effective unless in writing and signed by the City and Donor.

11. **Notices.** All notices required or allowed to be given pursuant to this Agreement shall be in writing, and either (i) delivered in person to the party, or (ii) delivered by U.S. mail or private courier, postage prepaid, or (iii) transmitted by facsimile machine to the facsimile number of the receiving party (if any) stated in this Agreement. Notices will be deemed received the earlier of: (a) when actually delivered, if personally delivered, (b) when transmitted if sent by facsimile or email, or (c) three days after placement in the U.S. Mail or delivery to private courier, properly addressed to the recipient.

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<th>If to the City:</th>
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<td>City of Lynnwood</td>
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<td>Parks, Recreation &amp; Cultural Arts Director</td>
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<td>PO Box 5008</td>
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<td>Lynnwood, Washington 98046-5008</td>
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Either party may, by like written notice, designate a new address and/or addresses to which such notices shall be directed.

WHEREFORE, the parties have executed this Agreement as of the date stated above.

DONOR: 

By ____________________________    By ____________________________

Its ____________________________  Its Mayor

THE CITY:
City of Lynnwood, Washington, a municipal corporation