

1 **WILCOX PARK SHELTER DONATION AGREEMENT**

2
3 THIS DONATION AGREEMENT (this "Agreement") is made this _____ day of _____
4 _____, 2007, by and between the WILCOX LOVING TRUST ("Donor") and the CITY OF
5 LYNNWOOD, WASHINGTON, a municipal corporation (the "City").
6

7 Recitals

8
9 A. The City owns a public park located at 5215 196th Street S.W., Lynnwood Washington,
10 called "Wilcox Park" (the "Park").
11

12 B. Donor desires to donate to the City a picnic shelter and related amenities for the Park, as
13 set forth more fully below (the "Donation"). The City desires to accept such donation from
14 Donor.
15

16 C. The parties desire to set forth the terms and conditions of the Donation in this Agreement.
17

18 NOW THEREFORE, for and in good and valuable consideration, the receipt of which is hereby
19 acknowledged, the parties hereto agree as follows:
20

21 1. The Donation. Donor agrees to donate to the City, and the City agrees to accept from
22 Donor, a picnic shelter and related amenities to be constructed upon an area within the Park to be
23 mutually selected by Donor and the City. The Donation shall consist of the following: (i) a
24 Gothic Arch Picnic Shelter approximately 24' x 36' in dimension; (ii) an asphalt parking area
25 adjacent to the shelter, in an area to be mutually selected by Donor and the City, with 11 parking
26 stalls and 2 handicapped parking stalls, to include all necessary curbing and striping services;
27 (iii) a 6' x 100' concrete walk connecting the parking area to the shelter; (iv) a 44' x 56' concrete
28 pad necessary to support the shelter; and (v) a plaque naming the shelter and detailing the
29 Donation.
30

31 Donor shall provide all materials, labor and services in connection with the Donation,
32 except that the City shall assist Donor, at no cost to Donor, with the initial site plan and grading
33 activities necessary to support the Donation. The parties shall mutually determine a construction
34 schedule for the Donation, which Donor will endeavor to follow to the best of its ability. Donor
35 shall have the discretion to select all materials and designs associated with the Donation;
36 provided that Donor shall satisfy all applicable federal, state and local laws and regulations
37 pertaining to the design and construction of the shelter and related amenities; and provided,
38 further, that the final plans for the shelter and related amenities, including the contents of the
39 plaque, shall be subject to the City's approval, which approval shall not be unreasonably
40 withheld, conditioned or delayed. Upon final approval by the City, Donor shall promptly
41 undertake construction of the Donation and diligently pursue the completion thereof. Donor
42 shall restore any areas of the Park disturbed by Donor's construction activities to substantially
43 similar condition as existed prior to such construction.
44

45 2. Value of Donation. The parties agree that a reasonable estimate of the total value of the
46 Donation, including the donated materials, labor and services, is ONE HUNDRED THOUSAND

1 DOLLARS AND NO/100THS (\$100,000.00). If Donor elects to claim tax benefits associated
2 with the Donation, the City agrees, upon request, to provide Donor reasonable written
3 verification of the City's receipt of the Donation and the value thereof; provided, that the City
4 makes no representations, warranties or guarantees relating to the tax implications of such
5 Donation.
6

7 3. Insurance. At all times during the planning and construction phases of the Donation,
8 Donor shall maintain and keep in force the following insurance policies against claims for
9 injuries to person (including death) or damage to property arising out of or in connection with the
10 planning or construction of the Donation by Donor, its employees, subcontractors and agents:
11

12 3.1 Automobile Liability Insurance with limits no less than \$1,000,000.00 combined
13 single limit per accident for bodily injury and property damage.
14

15 3.2 Commercial General Liability Insurance written on an occurrence basis with
16 limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00
17 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but
18 not be limited to blanket contractual; products/completed operations; broad form property
19 damage; explosion; collapse and underground (XCU) if applicable, and employer's liability.
20

21 3.3 Professional Liability Insurance with limits no less than \$1,000,000.00 limit per
22 occurrence.
23

24 Donor shall provide evidence of such insurance by submitting an insurance certificate provided
25 on a standard "Accord" or comparable form.
26

27 4. Indemnification.
28

29 4.1 By Donor. Donor shall protect, defend, indemnify and hold harmless the City, its
30 officers, employees and agents (collectively, the "Indemnified Parties") from any and all costs,
31 claims, liabilities, judgments or awards of damages, including attorney's fees (collectively, the
32 "Claims") arising out of or in any way resulting from Donor's and/or Donor's officers', agents',
33 employees' and subcontractors' performance of this Agreement, except that the City shall be
34 liable for any Claim(s) caused solely by the negligence or willful misconduct of the Indemnified
35 Parties. The foregoing duty is specifically and expressly intended to constitute a waiver of
36 Donor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the
37 City with a full and complete indemnity and defense of claims made by Donor's employees. The
38 parties acknowledge that these provisions were mutually negotiated upon by them.
39

40 4.2 By the City. The City shall protect, defend, indemnify and hold harmless the
41 City, its officers, employees and agents (collectively, the "Indemnified Parties") from any and all
42 costs, claims, liabilities, judgments or awards of damages, including attorney's fees (collectively,
43 the "Claims") arising out of our in any way resulting from the City's and/or the City's officers',
44 agents', employees' and subcontractors' performance of this Agreement, except that Donor shall
45 be liable for any Claim(s) caused solely by the negligence or willful misconduct of the
46 Indemnified Parties. The foregoing duty is specifically and expressly intended to constitute a

1 waiver of the City's immunity under Washington's Industrial Insurance Act, RCW Title 51, as
2 respects Donor with a full and complete indemnity and defense of claims made by the City's
3 employees. The parties acknowledge that these provisions were mutually negotiated upon by
4 them.

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

10
11 6. Counterparts. This Agreement may be executed in one or more counterparts, each of
12 which will be deemed to be an original, and all of which together will constitute one and the
13 same instrument.

14
15 7. Governing Law. This Agreement is governed by and shall be construed according to the
16 laws of the State of Washington. Venue for any dispute arising hereunder shall be Snohomish
17 County, Washington.

18
19 8. Binding Effect. This Agreement is binding on the City, Donor, and their respective
20 successors, assigns and legal representatives.

21
22 9. Assignment. This Agreement may not be assigned without the express written consent of
23 the parties, which consent shall not be unreasonably withheld.

24
25 10. Entire Agreement; Amendment. This Agreement sets forth the final and entire
26 Agreement between the parties hereto and neither they nor their agents shall be bound by any
27 terms, conditions, statements, warranties or representations, oral or written, not herein contained.
28 No amendment or modification of this Agreement will be effective unless in writing and signed
29 by the City and Donor.

30
31 11. Notices. All notices required or allowed to be given pursuant to this Agreement shall be
32 in writing, and either (i) delivered in person to the party, or (ii) delivered by U.S. mail or private
33 courier, postage prepaid, or (iii) transmitted by facsimile machine to the facsimile number of the
34 receiving party (if any) stated in this Agreement. Notices will be deemed received the earlier of:
35 (a) when actually delivered, if personally delivered, (b) when transmitted if sent by facsimile or
36 email, or (c) three days after placement in the U.S. Mail or delivery to private courier, properly
37 addressed to the recipient.

38
39 If to Donor:

40 _____
41 _____
42 _____
43 _____
44 _____

If to the City:

City of Lynnwood
Parks, Recreation & Cultural Arts Director
PO Box 5008
Lynnwood, Washington 98046-5008

1 Either party may, by like written notice, designate a new address and/or addresses to which such
2 notices shall be directed.

3
4 WHEREFORE, the parties have executed this Agreement as of the date stated above.

5
6
7 DONOR:

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

10
11
12
13 By _____
14 Its _____
15

By _____
Its Mayor