

**AGREEMENT BETWEEN THE CITY OF YAKIMA AND THE CENTRAL DISTRICT OF WASHINGTON STATE
FEDERATION OF GARDEN CLUBS FOR DEVELOPMENT, MAINTENANCE AND USE OF A PORTION OF
TAHOMA CEMETERY FOR PLACEMENT OF A BLUE STAR MEMORIAL**

THIS AGREEMENT is entered into among the City of Yakima (hereinafter the “City”) whose address is 129 North 2nd Street, Yakima, Washington, 98901; and the Central District of Washington State Federation of Garden Clubs (hereinafter “Club”) whose address is PO Box 1046 Naches, WA 98937 for purposes of the development, maintenance and use of a portion of Tahoma Cemetery for placement of a Blue Star Memorial (hereafter “Memorial”).

WHEREAS, the City is the owner of the Tahoma Cemetery located generally at 1802 Tahoma Avenue, Yakima, Washington; and

WHEREAS, Tahoma Cemetery is a valuable resource for the community, and also serves as a cemetery for veterans that would benefit from a Blue Star Memorial commemorating their service and sacrifice; and

WHEREAS, the City is committed to ensuring that improvements to Tahoma Cemetery serve the best interests of the community, improve Tahoma Cemetery facilities, and serve to enhance Tahoma Cemetery; and

WHEREAS, the Central District of Washington State Federation of Garden Clubs, is interested in bettering the Tahoma Cemetery and recognizing the service and sacrifice of veterans through the placement of a Blue Star Memorial at Tahoma Cemetery; and

WHEREAS, the Central District of Washington State Federation of Garden Clubs, will provide all funding for purchasing the sign and maintenance of the sign at Tahoma Cemetery at a mutually agreed upon location; and

WHEREAS, the City is willing to accept the financial, design and other resources offered by Central District of Washington State Federation of Garden Clubs, for the improvements;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and performed by the parties hereto, it is hereby agreed as follows:

1. Purpose. The purpose of this Agreement is to define the responsibilities of the City and the Central District of Washington State Federation of Garden Clubs, in the Tahoma Cemetery improvement of a Blue Star Memorial sign and to provide for effective cooperation in the implementation of the provisions set forth herein.

2. Obligations of the Parties.

The City shall perform the following obligations in regard to the Blue Star Memorial sign at Tahoma Cemetery:

- A. The City shall assist in planning the improvements to the Tahoma Cemetery to add a Blue Star Memorial.

- B. The City shall oversee the site development in accordance with the plans provided by the Club.
- C. The City shall maintain the Tahoma Cemetery grounds and work with the Club to ensure the Club has access to the Blue Star Memorial for maintenance and upkeep.
- D. The City will install the marker at the agreed site.

The Club shall perform the following obligations in regard to the Park:

A. Construction and Development

- 1. The Club shall design and build the Blue Star Memorial to serve as a focal point in the mutually agreed upon area of Tahoma Cemetery on which the Memorial will be constructed, specifically near the Veterans section of the cemetery.
- 2. The proposed design, including working drawings, shall be submitted to the City's Department of Public Works ("Public Works") for review and approval prior to commencement of any ground-disturbing activity at the site.
- 3. The design documents and working drawings shall include all features of the Blue Star Memorial including any landscaping around the Blue Star Memorial and the Memorial structure itself.
- 4. As soon as practical after receiving approval from Public Works for a mutually agreed plan, the Club shall commence work and advise Public Works of its progress with final completion of the project required within four (4) months of the start date, unless a different date is mutually agreed upon in an amendment to this Agreement.
- 5. The Club shall inform Public Works of the progress of the project and promptly consult with Public Works concerning any proposed changes from the working drawings, planned construction, landscape or other elements of the site including, but not limited to the Blue Star Memorial sign.
- 6. The Club shall immediately halt all work at the site and consult with Public Works regarding any problem or material change in the plans.

B. Operation and Maintenance

- 1. The Club shall maintain the Blue Star Memorial sign and associated improvements, including regular care and cleaning of the Blue Star Memorial sign.
- 2. The Club shall ensure the overall condition of the Blue Star Memorial sign and associated improvements are consistent with the general standards for use and enjoyment by the public with appropriate regard for health, safety and welfare, the aesthetics of the area and all other aspects of the site and its elements, but shall have no lawn care responsibilities.
- 3. The Club and the City shall cooperate to ensure that the Blue Star Memorial sign will be replaced if there is destruction, whether due to accident, natural causes, vandalism or other factors. Replacement of the sign and associated improvements shall be at the expense of the Club.

C. Alteration and Removal

- 1. The Club shall not materially alter the site or its configuration without prior written approval from Public Works.
- 2. The Club shall not remove any part of the improvements, including, but not limited to the Blue Star Memorial sign, without prior written approval from Public Works.

D. Consultation

- 1. The Club shall consult with Public Works on an annual basis, or more often as necessary, for purposes of monitoring the condition of the sign and improvements and determining

if any additional improvements are required in the operation and maintenance of the site.

2. The Club shall provide all requested information, as requested by Public Works, concerning the condition of the Blue Star Memorial sign and associated improvements, and shall not unreasonably withhold consent to meeting and exchanging information necessary to implement this Agreement.

3. Term. The term of this Agreement shall commence upon execution hereof and shall remain in effect unless the Agreement is terminated earlier by either party under Section 17 of this Agreement. The Club shall proceed with its obligations in a timely manner but shall not have any responsibility for delays caused by others beyond their control or that were not reasonably foreseeable.

4. Administration. This Agreement shall be administered by the City's Parks and Recreation Division.

5. Independent Contractors. The Club understands and expressly agrees that it is an independent contractor in the performance of each and every part of this Agreement. As an independent contractor, it assumes the entire responsibility for carrying out and accomplishing the work and/or services required under this Agreement. It shall have the sole judgment of the means, mode or manner of the actual performance of the work and/or services required under this Agreement. Additionally, and as an independent contractor, it, and its employees and volunteers, shall make no claim of City employment nor shall it claim against the City any related employment benefits, social security and/or retirement. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the Club, any officer, employee, volunteer or agent thereof, and the City.

6. No Third Party Rights. This Agreement is entered into for the sole benefit of the parties. It shall confer no benefits or rights, direct or indirect, on any third parties. No person or entity other than the City and the Club may rely upon or enforce any provision of this Agreement.

7. Indemnification and Hold Harmless.

A. The Club agrees to defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers, employees, agents and volunteers (hereinafter "parties protected") from (1) claims, demands, liens, lawsuits, administrative and other proceedings, (including reasonable costs and attorneys' fees) and (2) judgments, awards, losses, liabilities, damages, penalties, fines, costs and expenses of any kind claimed by third parties arising out of, or related to any death, injury, damage or destruction to any person or any property to the extent caused by any negligent act, action, default, error or omission or willful misconduct arising out of the Club's performance under this Agreement. In the event that any lien is placed upon the City's property or any of the City's officers, employees or agents as a result of the negligence or willful misconduct of the Club, the Club shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

B. City agrees to indemnify and hold the Club harmless from loss, cost, or expense of any kind claimed by third parties, including without limitation such loss, cost, or expense resulting from injuries to persons or damages to property, caused solely by the negligence or willful misconduct of the City, its employees, officers, volunteers or agents in connection with this Agreement.

C. If the negligence or willful misconduct of both the Club and the City (or a person identified above for whom each is liable) is a cause of such third party claim, the loss, cost, or expense

shall be shared between the Club and the City in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity will apply for such proportion.

D. Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.

E. The provisions of this Section shall survive the termination or expiration of this Agreement.

8. Nondiscrimination. During the performance of this Agreement, the Parties shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, or any other classification protected under federal, state or local law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement.

9. Records. The Club shall maintain (in accordance with generally accepted accounting practices) books, accounts, records, documents and other materials related directly or indirectly to the costs, expenses, and expenditures incurred and/or made pursuant to this Agreement. All such books, accounts, records, documents and other materials shall be subject to inspection and audit at reasonable times by representatives of the City of Yakima and/or of the Washington State Auditor, upon forty-eight (48) hours written notice. Said books, accounts, records, documents and other materials may be copied by said local and/or state government representatives as part of such an inspection/audit.

The records relating to this Agreement must be made available to the City. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to this Agreement must be retained by the Club for a minimum of six (6) years after the end date or termination of this Agreement. The records shall at all times be subject to inspection by and with the approval of the City of Yakima, and will be provided to the City upon the City's request. This Section shall survive the termination of this Agreement.

10. Compliance with Law. The Parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

11. No insurance. It is understood the City does not maintain liability insurance for the Club, or its employees, officers, volunteers or subcontractors.

12. Waiver of Breach. A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

13. Dispute Resolution. The City and the Club shall meet to discuss any outstanding issues related to the development of the site and/or the implementation of this Agreement in order to resolve any disputes through cooperation and negotiation.

14. Integration. This Agreement contains all of the terms and conditions agreed on by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, are deemed to exist or to bind either of the parties.

15. Modifications. The parties may modify this Agreement but no proposed changes or modifications shall have validity or become binding on either party unless such changes or modifications are in writing and executed by both parties.

16. Severability. If a court of competent jurisdiction holds any part, term or provision of this Agreement illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held invalid. Further, if any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision in this Agreement which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

17. Termination. The parties may terminate this Agreement, with or without cause, by written notice from either party to the other party thirty (30) days in advance of the termination.

18. Survival. Any provision of this Agreement which imposes an obligation after expiration or termination of this Agreement shall survive the expiration or termination and shall bind the parties.

19. Notices. Unless otherwise stated herein, all notices and demands are required in written form and sent to the parties at their addresses as follows:

TO: CITY OF YAKIMA
Alex Meyerhoff, Interim City Manager
129 North Second Street
Yakima, WA 98901

COPY TO: CITY OF YAKIMA
c/o Parks & Recreation Manager
2301 Fruitvale Blvd.
Yakima, WA 98902

TO: CENTRAL DISTRICT OF WASHINGTON STATE FEDERATION OF GARDEN CLUBS
PO Box 1046
Naches, WA 9893

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

DATED this ____ day of _____, 2020.

CITY OF YAKIMA

**CENTRAL DISTRICT OF WASHINGTON STATE
FEDERATION OF GARDEN CLUBS**

Alex Meyerhoff, Interim City Manager

Print Name:

Title: _____

ATTEST:

Sonya Claar Tee, City Clerk