

**AGREEMENT BETWEEN THE CITY OF YAKIMA
AND
THE MILLENNIUM FOUNDATION
FOR “Radiance Mosaic Project”
AT MILLER PARK**

THIS AGREEMENT is entered into between the City of Yakima (hereinafter the “City”), whose address is 129 North 2nd Street, Yakima, Washington 98901, and, the Millennium Foundation (hereinafter the “Foundation”), for purposes of the purchase and installation of artwork, titled “Radiance Mosaic Project” (hereinafter the “Mosaic Project”), at Miller Park (hereinafter the “Park”).

WHEREAS, the City is the owner of the Park located at N. 4th Street and East “E” Street, Yakima, Washington; and

WHEREAS, the Park is a valuable recreational resource for the community; and

WHEREAS, the City is committed to ensuring that improvements to the Park serve the best interests of the community; and

WHEREAS, the Foundation is a nonprofit corporation duly formed and existing under the laws of the State of Washington, with registered office located at 601 North 39th Ave, Yakima, Washington; and

WHEREAS, the Foundation is dedicated to enhancing the Park for the benefit of the community; and

WHEREAS, the Foundation is willing to contribute financial and other resources to the City for artwork at the Park; and

WHEREAS, the City is willing to accept the financial and other resources offered by the Foundation for artwork at the Park;

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 Foundation in the installation of artwork, designed by Tieton Mosaic, at Miller Park 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 Park:

- A. The City shall assist in planning for the Mosaic Project in the Park;
- B. The City shall oversee the site development of the areas where the Mosaic Project will be constructed;

- C. The City shall ensure the site has accessibility for the handicapped;
- D. The City shall provide excavating and preparation of the sites;
- E. The City shall maintain and repair the Mosaic Project, once completed; and
- F. The City shall take other steps, as necessary, to ensure public safety in the use and enjoyment of the Mosaic Project.

The **Foundation** shall perform the following obligations in regard to the Park:

- A. The Foundation shall provide the funding for the purchase, installation, construction, maintenance and repairs of the artwork for the Mosaic Project in the Park and reserves the right to voluntarily contribute additional sums as it deems necessary and appropriate, subject to the City's approval which it will not unreasonably withhold;
- B. The Foundation shall assist the City in the planning and site development of the Mosaic Project;
- C. The Foundation shall confer with the City as necessary in regard to any outstanding matters related to maintenance and repair of the Mosaic Project; and
- D. The Foundation shall be allowed to install a sign that is consistent with the Yakima Municipal Code near the artwork recognizing the donors of the project, and the sign shall be placed in a location that is agreed upon by both parties.

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 16 of this Agreement. The Foundation shall proceed with their obligations in a timely and diligent manner but shall not have any responsibility for delays caused by others beyond the control of the Foundation or that were not reasonably foreseeable.

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

5. **Independent Contractor.** The Foundation and the City understand and expressly agree that the Foundation is an independent contractor in the performance of each and every part of this Agreement. The Foundation, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the work/services required for its performance under this Agreement. The Foundation, as an independent contractor, shall have the sole judgment of the means, mode or manner of the actual performance of work/services required for its performance under this Agreement. Additionally, and as an independent contractor, the Foundation and their employees shall make no claim of City employment nor shall 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 Foundation and/or any officer, employee or agent of the Foundation 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 Foundation may rely upon or enforce any provision of this Agreement.

7. Indemnification and Hold Harmless.

A. Foundation agrees to release, indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of Foundation, or any Foundation's agent or subcontractor, in performance of this Agreement, except for claims caused by the City's sole negligence. The City's right to indemnification includes attorney's fees costs associated with establishing the right to indemnification hereunder in favor of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Foundation and the City, Foundation's liability, including the duty and cost to defend, shall be only to the extent of Foundation's negligence.

C. It is specifically and expressly understood that Foundation waives any immunity that may be granted to it under Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. Foundation's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under worker's compensation acts, disability benefit acts or any other benefit acts or programs. Foundation shall require that its subcontractors, and anyone directly or indirectly employed or hired by Foundation, and anyone for whose acts Foundation may be liable in connection with its performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.

D. The City agrees to release, indemnify, defend and hold harmless Foundation, its officers, directors, shareholders, partners, employees, agents, representatives and subcontractors harmless from any and all claims, demands, actions, suits, causes of action, arbitration, mediations, proceedings, costs, and/or litigation expenses to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors or omissions of the City.

E. Survival. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8. Insurance Required.

A. Liability Insurance. Before this Agreement is fully executed by the parties, Foundation shall provide the City with a Certificate of Insurance as proof of liability insurance providing coverage for bodily injury and property damage with limits not less than Two Million Dollars per occurrence, and Two Million Dollars in the aggregate. The above coverage limits may be satisfied by the procurement of an Umbrella or Excess policy if necessary. The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the City, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without giving the City thirty (30) days prior written notice. The Certificate of Insurance shall be provided to the City annually with each new insurance policy period. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

B. Foundation shall require that all subcontractors it enters into Agreements with shall maintain and provide proof of insurance in accordance with this section, including but not limited to the same level of coverage and naming the City, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington, or an approved surplus lines company

C. Survival. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

9. 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, and 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.

10. Compliance With Law. The Parties to this Agreement shall comply with all applicable federal, state and local laws, and 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 Foundation or its employees and subcontractors, nor does the Foundation maintain liability insurance for the City or its employees and contractors.

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 Foundation shall meet to negotiate any outstanding issues related to the installation of the Mosaic Project and the implementation of this Agreement in order to resolve any disputes through cooperation and negotiation to the greatest extent possible. If negotiation is not successful, the Parties may consent to mediation or another form of dispute resolution but only if agreed to in advance in writing.

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.

A. 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.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision 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. Either party may terminate this Agreement, with cause, by written notice of default from the non-defaulting party, if the default is not cured within thirty (30) days following the giving of such notice. In addition, either party may terminate the Agreement, without cause, upon thirty (30) days' written notice to the other party before either party has incurred substantial expenses (defined as expenses in excess of \$1000) following the full execution of this Agreement, to perform its obligations hereunder, but not thereafter, except for cause.

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
Robert Harrison, City Manager
City of Yakima
129 North Second Street
Yakima, WA 98901

TO: MILLENNIUM FOUNDATION
David Lynx, President
601 N. 39th Ave
Yakima, WA 98902

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

21. **Venue.** Venue for an action arising under this Agreement shall be in Yakima County Superior Court.

CITY OF YAKIMA

MILLENNIUM FOUNDATION

Robert Harrison, City Manager

David Lynx, President

Date Signed

Date Signed

ATTEST:

Sonya Claar Tee, City Clerk