

**AGREEMENT BETWEEN THE CITY OF YAKIMA, HOGBACK DEVELOPMENT COMPANY, L.L.C. AND
STEPHENS AND SONS CONSTRUCTION, INC. FOR DEVELOPMENT, MAINTENANCE AND USE OF
ROSALMA GARDEN CLUB PARK (located at South 16th Avenue and Tieton Drive)**

THIS AGREEMENT is entered into among the City of Yakima (hereinafter the “City”) whose address is 129 North 2nd Street, Yakima, Washington, 98901; Hogback Development Company, L.L.C. (hereinafter “Hogback”) whose address is 2612 W. Nob Hill Blvd., Yakima, Washington, 98902; and Stephens and Sons Construction, Inc. (hereinafter “Stephens”) whose address is 417 South 51st Avenue, Yakima, Washington, 98908, for purposes of the development, maintenance and use of Rosalma Garden Club Park (hereafter “Park”).

WHEREAS, the City is the owner of the Park located at South 16th Avenue and Tieton Drive, Yakima, Washington; and

WHEREAS, the Park is a valuable resource for the community that would benefit from improvements; and

WHEREAS, the City is committed to ensuring that improvements to the Park serve the best interests of the community, improve the park facilities and look of the Park, and serve to increase use of the Park; and

WHEREAS, Hogback and Stephens, jointly, are interested in bettering the Yakima community through improvements to the Park; and

WHEREAS, Hogback and Stephens, jointly is willing to contribute financial, design and other resources to the City for the improvement of the Park; and

WHEREAS, the City is willing to accept the financial, design and other resources offered by Hogback and Stephens for the improvement to 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, Hogback and Stephens in the Park improvements 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 the improvements to the Park.
- B. The City shall oversee the site development in accordance with the plans provided by Hogback and Stephens.
- C. The City shall maintain the improvements and the Park in accordance with its general maintenance schedule and policies.

Hogback and Stephens, jointly, shall perform the following obligations in regard to the Park:

- A. Hogback and Stephens shall provide the design of the improvements, which must be approved by the City, at no cost to the City.
- B. Hogback and Stephens shall provide all landscaping materials, plants, and improvements proposed in the plans.
- C. Hogback and Stephens will provide the labor and select all contractors to design and improve the Park, at no cost to the City.
- D. Hogback and Stephens will confer with the City as necessary in regard to any outstanding matters related to the maintenance and repair of the improvements.

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. Hogback and Stephens shall proceed with their 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. Hogback and Stephens understand and expressly agree that they are independent contractors in the performance of each and every part of this Agreement. As independent contractors, they assume the entire responsibility for carrying out and accomplishing the work and/or services required under this Agreement. They 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 independent contractors, they, and their employees, shall make no claim of City employment nor shall they 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 Hogback and Stephens, any officer, employee 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 Hogback and Stephens may rely upon or enforce any provision of this Agreement.

7. Indemnification and Hold Harmless.

A. Each party hereto agrees to maintain responsibility and assume liability in the performance of this Agreement for its own wrongful and/or negligent acts or omissions, and those of its officers, agents or employees, to the fullest extent allowed by law; provided, however, that upon completion of the improvements, and acceptance thereof by the City, the City shall be solely responsible for maintenance and operation of the Park and shall hold Hogback and Stephens harmless from any responsibility or liability arising after the City's acceptance caused by the wrongful and/or negligent acts, or omissions of the City or any third party.

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

C. Nothing contained in this Section or this Agreement shall create a liability or a right of indemnification in any third party.

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. Hogback and Stephens 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, and are City of Yakima records. 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 Hogback and Stephens 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 Hogback or Stephens, or their employees and 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 Hogback and Stephens shall meet to discuss any outstanding issues related to the development of the Park 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
Cliff Moore, City Manager
129 North Second Street
Yakima, WA 98901

TO: HOGBACK DEVELOPMENT L.L.C.
c/o Chris Waddle
2612 West Nob Hill Blvd. Suite 101-148
Yakima, WA 98902

TO: STEPHENS AND SONS CONSTRUCTION, INC.
c/o Benjamin Stephens
417 South 51st Avenue
Yakima, WA 98908

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

CITY OF YAKIMA

HOGBACK DEVELOPMENT L.L.C.

Cliff Moore, City Manager

Chris Waddle, Member-Manager

ATTEST:

STEPHENS AND SONS CONSTRUCTION, INC.

Sonya Claar – Tee, City Clerk

Benjamin Stephens, President